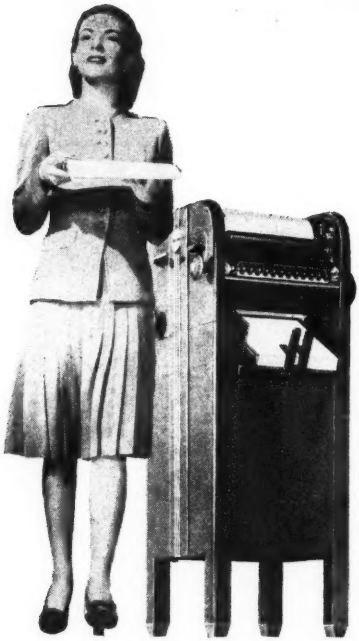
Public Utilities

FORTNIGHTLY

January 18, 1945

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS



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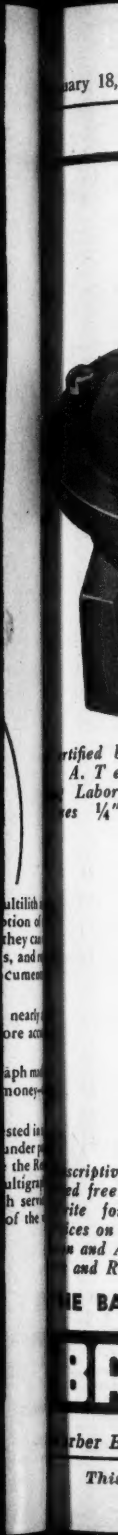

Gas Control = Gas Economy

NOW as never before, gas fuel of any type must be conserved. All consumers, appliance manufacturers and public service corporations are under strict obligation to secure top efficiency and economy from their gas-burning appliances.

One effective means of accomplishing this is by the use of a reliable gas pressure regulator on furnaces, boilers, water heaters, kitchen ranges, and other home and industrial appliances. On a control device so strategic as a regulator, complete dependability is a necessity. On Barber Regulators the bodies, working parts, springs and diaphragms are the finest obtainable. Unusually sensitive reaction to pressure drop is assured. The appearance of these regulators harmonizes with modern streamline equipment.

The use of Barber Regulators on appliances you sell, make, or sponsor, is not only evidence of quality equipment, but also a symbol of your compliance with our national conservation program.

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Public Utilities Fortnightly

VOLUME XXXV *January 18, 1945* NUMBER 2

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

It was with a sense of personal loss that we received the word of the death of Lieutenant Colonel Kendall Banning at the Fort Howard Veterans Hospital in Baltimore on December 27th. Colonel Banning really had a double career, his personal military history going back to 1902, when he joined the National Guard, and continuing until his death, when as a Lieutenant Colonel in the Signal Reserve he was with the Chief of Ordnance, Arlington, Virginia. As a Major in the Signal Corps during World War I he directed the division of public information, and in 1918 and 1919, while attached to the General Staff, he directed the compilation of a pictorial record and history of the war.

Our personal contact with Colonel Banning, however, stems from his prominent and successful civilian career as an editor and author. Following his graduation from Dartmouth, Colonel Banning became managing editor of the magazine *System*, holding that position until World War I called him into the service. After the war he was managing editor of *Hearst's Magazine* and the *Cosmopolitan*. From 1922 to 1928 he edited *Popular Radio*, and from 1923 to 1927 he was editorial director of the New Fiction Publishing Company.

Courtesy, New York Herald Tribune

KENDALL BANNING

As a Lieutenant Colonel, General Staff Corps, U. S. Army, in 1919, from a sketch by Joseph Cummings Chase.

It was in 1929 that Colonel Banning accepted the offer of the publishers of this publication to become the first editorial director of Public Utilities Fortnightly. He continued in that capacity until 1934, when he retired from the active editorial field to resume the writing of historical volumes.

Much that adheres to the form and character of Public Utilities Fortnightly today we owe to the creative talent of Colonel Banning. The format he composed is virtually unchanged. The familiar blue cover and characteristic emblem of the archer—even the distinctive type used in the title on the cover—have been followed, the same as when Colonel Banning worked them out back in 1929. The character of the publication, likewise, still reflects the vitality of his organization. It would not be unfair to say that he took what was in 1928 a publication predominantly legal in tone and converted it, almost overnight, into a magazine of national circulation, popular style, with a mixed readership extending into every branch and level of public utility operation, regulation, management, and finance. We know that many of our veteran readers will join with our editorial staff in extending to the widow and surviving family of Colonel Banning our condolences for the loss of this gallant soldier, scholar, and gentleman.

The challenge of surplus property disposal is the subject of the very timely article which opens this issue. It is written by Leo Barnes, director of economic research of the Research Institute of America. This organization, with its vast research staff of business editors, economists, and analysts, has made an exhaustive study of the problems and possibilities of the surplus property disposal situation and are continuing their close supervision of that subject for the benefit of their clientele. It is for this reason we feel Mr. Barnes is in an unusually qualified position to give us the benefit of his general thoughts on the question of surplus property disposal.

When we read of rocket bombs approaching if not surpassing the speed of sound, it must make people in the communications business wonder if physical transportation isn't threatening to catch up with at least the slower forms of modern communications. A prominent and very astute telephone company executive recently pointed out that if the Ger-

Otter Tail Power Co. — Canby, Minn.
75,000 lbs./hr.—500 lbs. Pressure—825°F. Temperature
Riley Pulverized Coal Fired Steam Generating Unit

n outstanding smaller public utility installation

f you want to see a truly outstanding smaller boiler unit, visit the Riley installation Otter Tail Power Company, Canby, Minn. Here is a unit which operates at 87.3% of ciency though Riley only guaranteed 85.7%—which though having a maximum capacity 5,000 pounds of steam per hour, maintains loads of 15,000 pounds with absolute ease complete ignition stability—which burns Illinois coals without slagging, the ash being rely granular in form.

t is because of such completely satisfactory performance that so many public utilities ve recently installed Riley Boiler Units.

RILEY
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COMPLETE STEAM GENERATING UNITS
BOILERS • PULVERIZERS • BURNERS • STOKERS • SUPERHEATERS
AIR HEATERS • ECONOMIZERS • WATER-COOLED FURNACES
STEEL-CLAD INSULATED SETTINGS • FLUE GAS SCRUBBERS

JOHN H. BICKLEY

The best business accounting system still requires expert and reasonable application.

(See Page 89)

man army can send tons of explosives from Holland to England, so rapidly as to arrive ahead of their own noise in traveling, it is not inconceivable that the Post Office Department of the future might be able to send tons of mail and parcels between city terminals in the same manner. The fact that some of these diabolic, so-called V-bombs are shaped like telegraph poles might even be symbolic. Point-to-point delivery between terminals two or three hundred miles apart in five minutes or so is pretty near telegraph time.

But, sensational as these developments in the field of physical transportation, so to speak, are—the fact remains that the art of communications itself is progressing rapidly under the impetus of war expediency. Radio, walkie-talkie, television, radiotelephony, ultra short-wave relay, and a host of other miraculous refinements in the field of both radio and electronic communications (many yet quite secret for reasons of military security) bear witness to the fact that the scientific guardians of the art of communications have not been marking time. They have kept abreast, and, if anything, are way ahead of the general march of technological improvement.

But, in the process, inevitable regulatory complications ensue, as might well be expected. Every new invention or utilization of radio means that much more strain upon the radio spectrum, which is already too crowded in spots and—although theoretically infinite in its divisibility—just now is badly in need of some traffic policing. In this issue Herbert Corey, our Washington correspondent, discusses some of these complications in his article, "Radio and the New World," beginning on page 81. Mr. Corey stresses the complications arising out of radio coverage by war correspondents. Obviously, the on-the-spot military walkie-talkie of today will inevitably affect public communication of the future.

We conclude in this issue (beginning page 89) the 3-part serial on original cost accounting by public utilities from the pen of John H. Bickley, nationally known public utility accountant and consultant of Chicago. Mr. Bickley, whose regulatory background spans staff service with five different commissions (Maryland, Pennsylvania, Wisconsin, Federal Trade Commission, and Federal Communications Commission), is originally a graduate of the University of Pennsylvania ('15) and sometime instructor and associate professor of accounting at Lehigh University. He will be readily recalled to many of our readers as the chief accountant in charge of the special telephone investigation of the FCC from April, 1935, to August, 1937; also for his work as staff accountant during the public utility investigation of gas and electric utilities by the Federal Trade Commission from May, 1928, to May, 1931.

Among the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

The Federal Power Commission, although asserting its jurisdiction to order a pipe-line connection with a local company distributing artificial gas, refused to take such action where a change to natural gas and authority to make the connection were not insured under state law. (See page 65.)

The method of computing salvage value of gas well equipment in determining accrued depreciation or depletion is prescribed by the Ohio commission. (See page 73.)

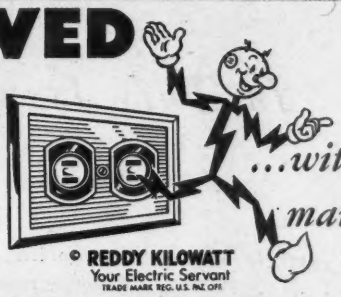
Whether a company which is contesting an ordinance reducing rates to residential and commercial customers, rather than seeking an increase in rates, should be allowed as an operating expense Federal income taxes increased on account of war instead of being limited to the combined normal and surtax rates for the year 1939, is ruled upon by the Ohio commission. (See page 73.)

The Colorado commission discusses the right of a nonprofit coöperative association to act as a public utility in one instance and as a nonutility in another as affecting authorization of the sale of public utility properties to the association. (See page 101.)

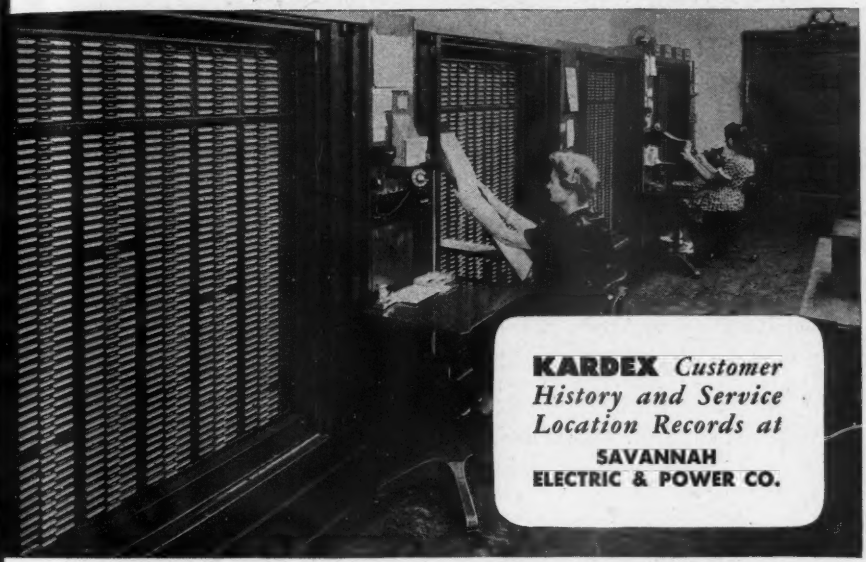
The next number of this magazine will be out February 1st.

The Editors

IMPROVED ERVICE



...with thousands of man-hours saved"



E double advantage of better cord control and substantially ed operating costs were the nah Electric & Power Com- 's chief reasons for replacing old methods with Kardex e Record Control.

ousands of man-hours have saved by this utility in the midst acute manpower shortage. The alized Kardex records eliminate paper work and reference to ple records, and also simplify " employee training.

VICE ORDERS of vastly increased ity are handled with speed and efficiency. The Kardex Meter and Transformer History Records facilitate greater equipment utilization.

COLLECTION POLICIES, based on instantly visible individual history records, are kept on a *currently* selective basis—a vitally important safeguard under war and post-war conditions.

PUBLIC RELATIONS are improved too... Although much heavier than normal, customer service activities proceed smoothly and efficiently with Kardex providing all wanted data without delay.

As officials of this Company say, "Once we knew every customer and could decide each case without reference to records, but now we must and gladly *do* let Kardex furnish the facts. We've obtained better control and we save thousands of man-hours."

FULL DETAILS showing how Kardex is enabling large and small public utilities to obtain greater efficiency with reduced costs are available from any Remington Rand Branch Office.

Kilowatt used by courtesy of Ashton B. Collins

In This Issue

In Feature Articles

In Financial News

In What Others Think

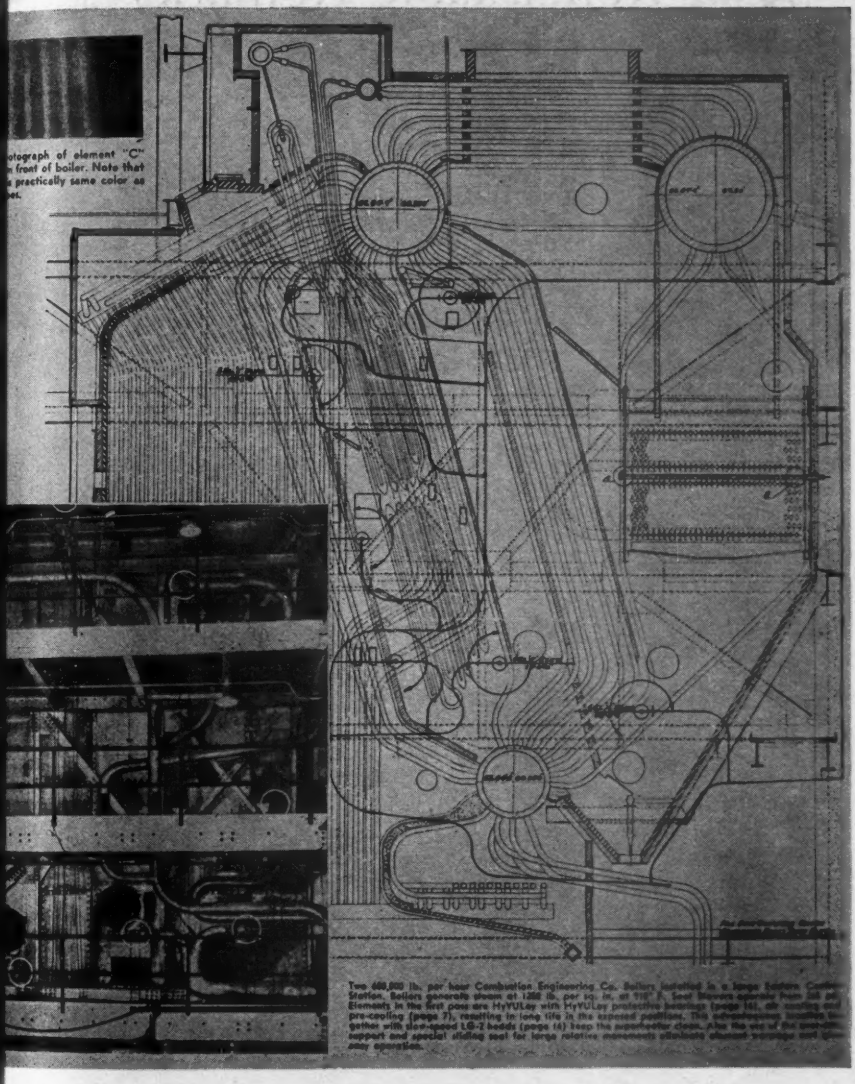
In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65-128, from 56 PUR(NS)

LCAN ENGINEERED SOOT BLOWER INSTALLATIONS



otograph of element "C" front of boiler. Note that practically same color as et.

Two 600,000 lb. per hour Combustion Engineering Co. Boilers installed in a large Eastern Central Station. Boilers generate steam at 1350 lb. per sq. in. at 910° F. Soot Blowers appears from left as: Elements in the first pass are HyVULoy with HyVULoy protective bearings (page 16), air cooling and pre-cooling (page 7), resulting in long life in the exposed positions. This arrangement assembled together with slow-speed LG-7 heads (page 16) keep the manufacturer close, also the use of the separate support and special sliding seal for large rotative movements eliminate element breakage and gives easy operation.

new VULCAN catalog fully describing VULCAN equipment appears in the Sweets, and a copy is available on your request.

CAN SOOT BLOWER CORPORATION, DU BOIS, PENNA.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

OLIVER LYTTELTON
British Minister of Production.

"We believe in the government's being a governor bu not a governess."

BERNARD M. BARUCH
Adviser, Office of War Mobilization.

"I want to give my life—I hope I can say continue t give my life—to the protection of freedom of speech, o worship, and of assembly."

VIRGIL JORDAN
President, National Industrial Conference Board.

" . . . nobody, business or government, can plan tomor row's employment for anyone without planning his oc cupation, spending, saving, and consumption for him."

GROVER C. NEFF
President, Wisconsin Power & Light Company.

"All users of electric service should contribute to th support of their government on an equal basis in pr portion to the amount used, regardless of whether the get this service from a private company, a co-op, or a go ernment-owned utility."

JEROME I. UDELL
Mex Udell Sons & Co.

"Private enterprise needs its preventive and curati drugs or it will die. We cannot rely on unregulated bus ness genius to bring permanent prosperity for all. Tha has failed before and it will fail again unless we estab lish the necessary rules and safeguards."

ALFRED P. SLOAN, JR.
Chairman, General Motors Corporation.

"Political promises and wishful thinking cannot crea jobs. Jobs are created by capital, know-how, and op portunity. In our system of capitalistic enterprise, th catalyst is an opportunity for profit. The keystone is con fidence in the future of business."

CHARLES E. WILSON
President, General Electric Company.

"I think the administration of the antitrust law . . . one of the biggest obstacles to postwar recovery . . . b cause it breeds attitudes in other government operation which are unhealthy, just as it raises up in industry a equivalent amount of scar tissue."

DONALD R. RICHBERG
Former chief, National Recovery Administration.

"The worker may have equal or superior rights in bar gaining, in fixing the terms of his employment. But th management must have and be free to exercise a su periority in bossing the job. To give the inferior positio a superior right of control is worse than wrong. It i ridiculous."

ERIC A. JOHNSTON
President, United States Chamber of Commerce.

"Constant reliance upon government may allow a sick economy to totter around, but the grueling race to personal freedom is never won by running on the wooden legs of any superstate."

WILLIAM S. KNUDSEN
Director, Air Technical Service Command.

"It is no exaggeration to say that the happiness of every American for the next two generations depends on the efforts and understanding of all of us in this gigantic job of readjustment."

THOMAS E. DEWEY
Governor of New York.

"For the sake of the men and women who are working and fighting and dying to win this war, for the sake of their children, and for the sake of the world, we must work to make America once more the land of opportunity."

ED WYNN
Comedian.

"I should like to advocate a government-supported television theater, to which the great body of American actors and actresses might look forward as the climax of their careers, and to which they can adapt their art."

HARVEY S. FIRESTONE, JR.
President, Firestone Tire & Rubber Company.

"I feel that this country need not go through another period of widespread unemployment and depression such as we had following the bursting of the 1929 bubble, provided, of course, that the government gives us the kind of business environment in which American industry can and will expand."

DONALD NELSON
Former chairman, War Production Board.

"If the President had wanted to push business around, his wartime control of materials gave him every opportunity. Some leftwingers would have liked to see that control used to weaken private ownership of industry, particularly the power industry. But the President supported the War Production Board in its policy of strict impartiality."

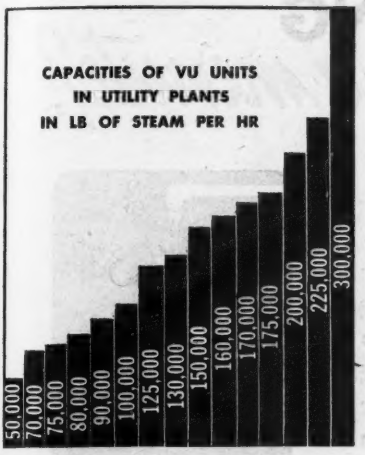
ALLEN M. BERNSTEIN
President, Bernstein-Macaulay, Inc.

"There is a growing belief that business is not an end in itself but actually a means of serving the general economy of the nation. It cannot serve that purpose if it fails to distribute at all times its capacity production. It faces that challenge during the coming decade. Its success or failure will mean either the continuation of the capitalistic system or socialism."

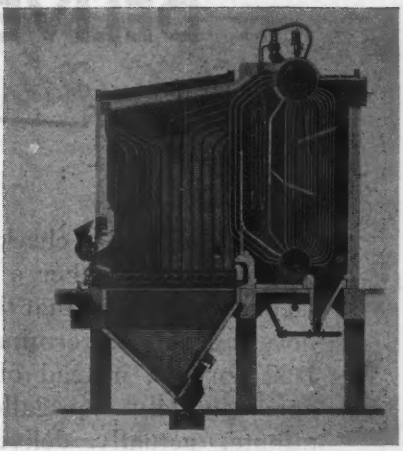
CHESTER BOWLES
OPA Administrator.

"I yield to no one in my confidence that free enterprise will continue to provide a higher standard of living under a free government and with full opportunity for the individual than any other system. But, very frankly, I have no patience with those who can see only its virtues, and are blind to its past defects or unwilling to take steps to correct them. We must eliminate the business cycle. By so doing, we can sustain business activity at all times at levels in line with our ability to produce."

UNIT MEETS A WIDE RANGE OF UTILITY REQUIREMENTS



Each column represents one or more actual installations.



The VU Unit is adaptable to any method of firing. Here it is equipped with a Spreader Stoker

What, specifically, is meant by a *wide* range of requirements? It includes all the usual items such as capacities, pressures, temperatures, fuels, space limitations and the like. It goes much further – it includes, particularly in the case of utility installations, high availability and high efficiency. It extends to such important considerations as the balance between initial investment and long range operating economy.

That Combustion Engineering's VU Steam Generator meets all these requirements exceptionally well is proved by the extent and variety of installations as well as performance records. VU Units have been installed in utility plants all over the country from Massachusetts to California and from Minnesota to Texas. Capacities of these units cover the range shown by the above chart; design pressures are from 150 to 1000 psi; steam temperatures range up to 900 F and higher. These installations employ both pulverized coal and stoker firing and utilize the great variety of coals evidenced by their geographical distribution. Many of them are fired by oil or gas and some by combinations of all three fuels.

The reliability of VU Units in utility service is evidenced by plant reports during recent war-time service of which the following are samples:

1. "The use factor for the combined units was 97%. The availability for the period was identical for both units, slightly better than 98%."

2. "Both units were on the line 16,191 hours during the year, a combined use factor of 92.4%. The combined availability during the same period was 96.1%."

Similar reports from other installations are available.

The VU Unit is designed for high efficiency. Actual efficiencies, depending upon fuels and operating conditions, range up to about 88%.

Designed and built to quality standards, VU Units are not sold – or bought – on price when first cost is the paramount consideration. But when a careful analysis of the balance between initial investment and long range operating economy is made, the real reasons for its widespread choice by utility engineers become apparent. A-344

COMBUSTION ENGINEERING
200 MADISON AVENUE NEW YORK 16, N. Y.

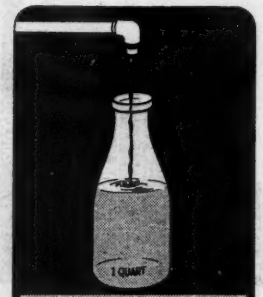
In your Meter Testing

IS YOUR 1/32" ORIFICE DELIVERING *over a gallon a minute?*

It will pay you to check it. Reports from a number of Water Departments show that their low flow test rate, determined by a 1/32" orifice, instead of giving approximately ¼ gallon per minute, actually delivered in excess of 1 gallon per minute.

After the installation of a Neptune Rate-of-Flow Indicator to get accurate regulation of the flow, it was found that repaired water meters which had passed previous tests, would not even move on ¼ gallon per minute.

Remember—13% of all water passing through ⅝" meters is used at about this ¼ gallon per minute rate. To obtain maximum revenue, they should register at least 90%.



A SUGGESTED WAY OF CHECKING LOW FLOW TEST RATES

One quart (¼ gallon) per minute is the standard low flow test rate for ⅝" meters. An easy way to check it on your test bench is by running it into a quart bottle. If the bottle is filled in less than a minute, the rate is too high.

115

NEPTUNE METER COMPANY • 50 West 50th Street • New York 20, N. Y.

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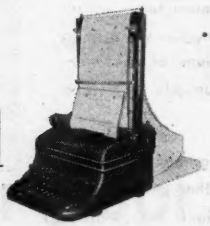
Neptune Meters, Ltd., Long Branch, Ont., Canada

4 WAYS IN WHICH EGRY "Do it in Writing" BUSINESS SYSTEMS HELP MEET THE LABOR SHORTAG

The shortage of typists and other office help is being met successfully through the use of Egry Business Systems.

1



EGRY SPEED-FEED may be attached to any standard make typewriter in one minute, and with Egry Continuous Forms, doubles the output of the operator—makes one machine do the work of two.

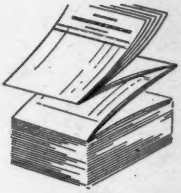
2

EGRY TRU-PAK Register speeds the writing of all handwritten records. Assures control over every business transaction.

3

EGRY ALLSET Forms, the modern single set forms for speed writing all business records. Individually bound sets, interleaved with one-time carbons, ALLSETS are ready for immediate use either over the typewriter or when written by hand.

4



EGRY CONTINUOUS Forms increase the output of operators by 50% and more because they eliminate many time-consuming operations. Furnished with or without interleaved one-time carbons.

Whether your records are written on the typewriter, billing machine, or by hand, there is an Egry System for every departmental activity. Egry Business Systems save time, money and materials, and afford complete control over every recorded transaction. To fully appreciate their usefulness, you should see them in action right in your own office. Free demonstrations may be arranged at your convenience. Complete information on request. There is no cost or obligation. Address Dept. F-118.

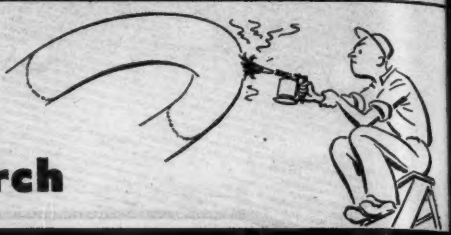
THE EGRY REGISTER COMPANY · Dayton, Ohio

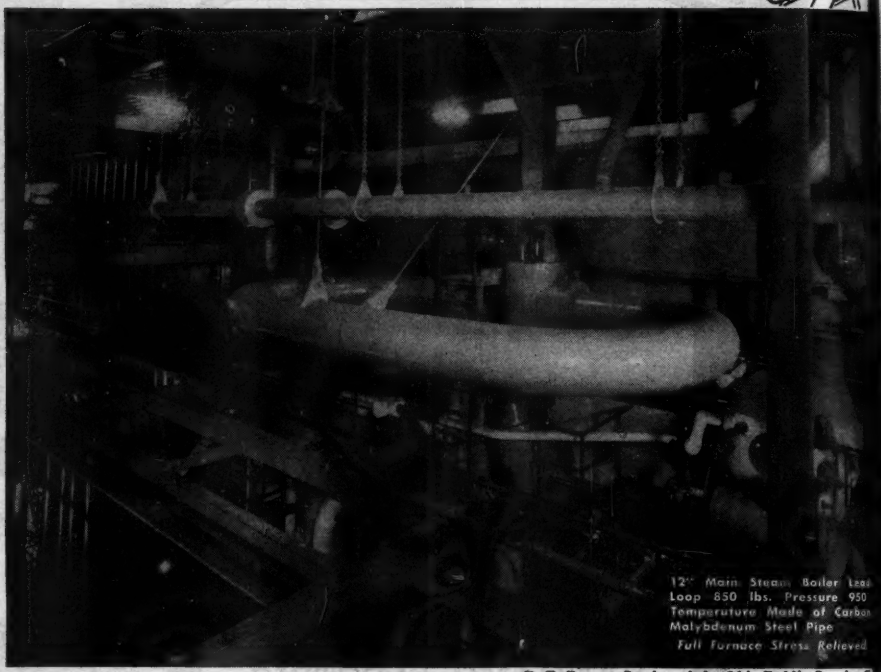
EGRY CONTINUOUS FORMS LIMITED, King and Dufferin Sts., Toronto, Ontario, Canada.

Egry maintains sales agencies in all principal cities.


Sangamo Capacitors Can Take It!
Climatic conditions, under which various communications equipments are operated, vary from the sub-zero temperatures of the northernmost climates to the tropical temperatures encountered at the equator. Conditions of humidity cover the extreme range; from the dry arid regions of the many deserts, to the almost 100% humidity in tropical and sub-tropical atolls.
It has been the problem of Sangamo engineers to design and produce capacitors that perform faithfully under these varying conditions, and so assure vitally needed communications at all times.
The wide variety of capacitors illustrated insures the availability of the proper unit for almost any mica capacitor requirement.
SANGAMO ELECTRIC COMPANY
SPRINGFIELD, ILLINOIS
MICA CAPACITOR
SANGAMO

You wouldn't tackle this job with a Blow Torch





R. E. Burger Station of the Ohio Public Service C

Trying to stress-relieve this main steam boiler lead loop with a blow torch in the field would be ridiculous.

Grinnell provides the specialized shop equipment to handle this class of work • Grinnell engineers and technicians have resourceful "know-how" gained from long experience. By continuous laboratory research and experimentation they are de oping new processes and techniques for prefabrication of piping for higher pressu higher temperatures and corrosive servi

Contact Grinnell whenever piping pl call for *interpretive engineering, laborat research* and *shop fabrication.*

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Cleveland 14, O.	Oakland 7, Cal.	San Francisco 7, Cal.
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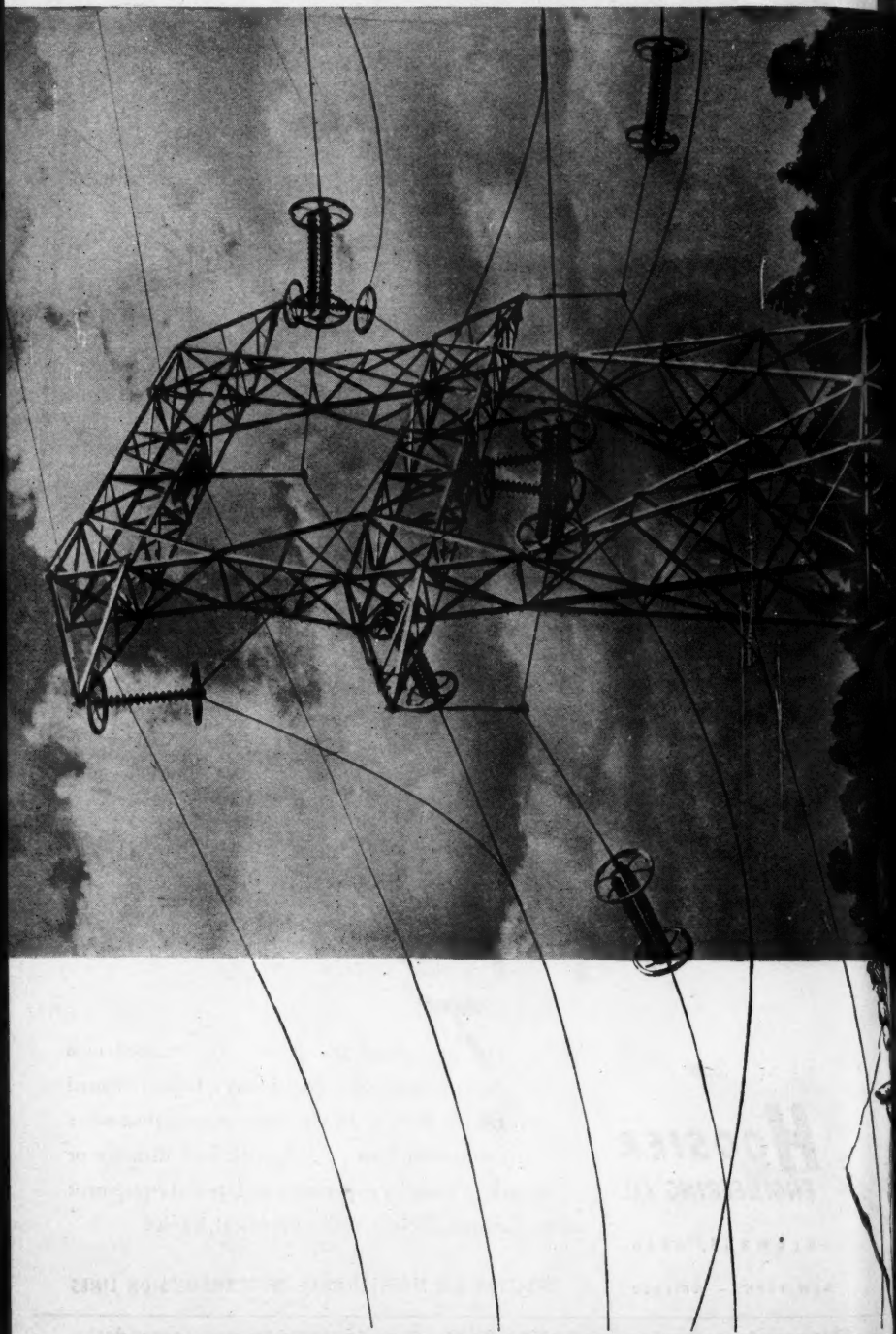

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Kilowatts to power a factory or fry an egg are carried from source to millions of outlets on the broad shoulders of Blaw-Knox transmission towers . . . Utility engineers everywhere know that their specifications are "the law" with Blaw-Knox tower designers and fabricators.

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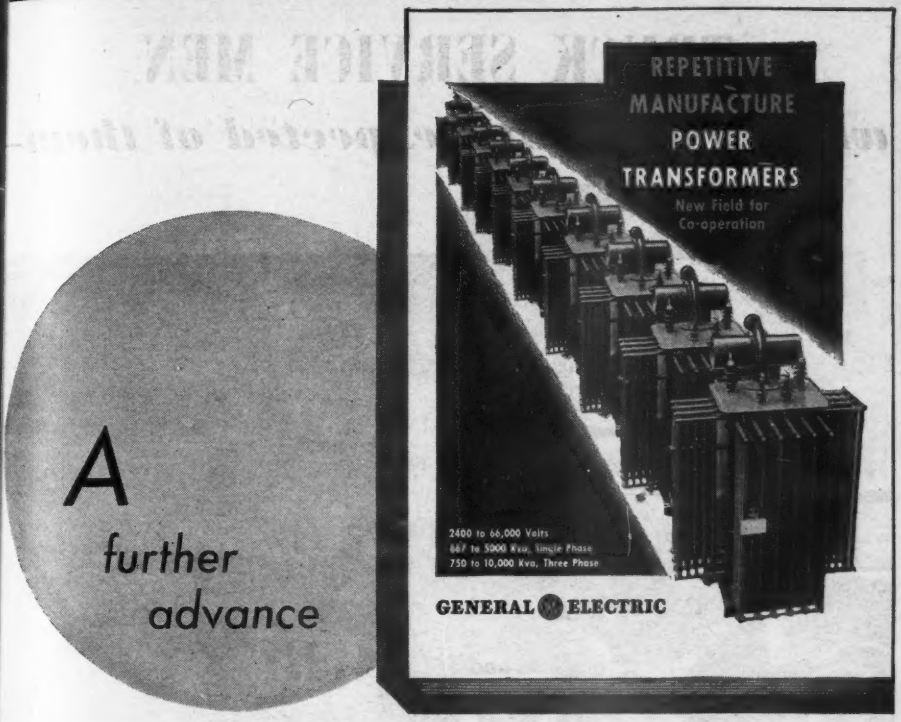

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New standard ratings of G-E POWER TRANSFORMERS help set the course for lower prices, lower capital investment

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Now, our new booklet—listing our repetitive-manufacture ratings, accessories, and combinations available—makes it easier than ever to hold to standards. It sets a course that can bring about further economies that we hope and expect to pass on to you. How soon and how sizeable these price reductions will be can be determined only by the extent of your continued co-operation in adhering to these standards.

We urge your careful consideration of the facts presented in this new booklet. Your G-E office can supply it. Ask for Bulletin GEA-4283. *General Electric Company, Schenectady 5, N. Y.*

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GENERAL ELECTRIC

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who know what's expected of them-

What's most important about truck service today?

Isn't it this: That the men who provide the service know what's expected of them . . . know that somehow they've got to keep overage trucks at work, hauling the million-and-one things a victory-bound nation needs?

Every day these men fix old trucks long overdue at the scrap heap—trucks that almost say, "I defy you to keep me hauling at a reasonable operating cost." The service men don't scare. Their attitude seems to be: "You can't bluff me, old timer, I'll keep you humping." And they do.

The service men at International Truck Branches, the nation's largest company-owned truck-service organization, and the service men who work for more than 5,000 International Truck Dealers aren't supermen. Sure, they have top tools, equipment and experience, and genuine International Parts. But they also know what's expected of them—know that unless they keep old trucks rolling, some of the things a victory-bound nation needs won't get there.

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INTERNATIONAL HARVESTER COMPANY
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with these four simple rules
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If you wish more detailed information, or have a special battery maintenance problem, don't hesitate to write to Exide. We want you to get the long-life built into every Exide Battery. Ask for booklet Form 3225.

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CHLORIDE
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. . . is a vital principle of utility operation!

Conservation of materials is no new story to the men who operate public utilities. With thrift and efficiency they have always planned for conservation.

They've squeezed the last ounce of use out of materials and equipment in their care . . . and today, that need is intensified.

One helpful principle to follow is that of "Buy to Last—Save to Win." Buy quality products and equipment, then care for it to avoid needless replacement. That conserves raw materials, labor, and space in factories. It frees these productive elements for essential war production.

THE ELECTRIC STORAGE BATTERY CO.
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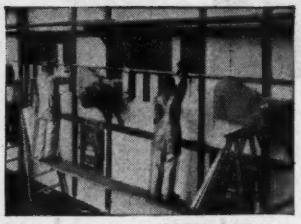
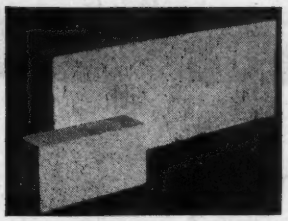
Solutions TO YOUR TOUGH INSULATING PROBLEMS!

WHATEVER your insulating problem, there's a Johns-Manville insulation that can solve it efficiently and at minimum cost. For over the past 86 years, Johns-Manville has pioneered in the field of industrial insulation. Today J-M offers a wide line of insulating materials, each designed for some specific insulation need, for temperatures up to 2600°. For example:



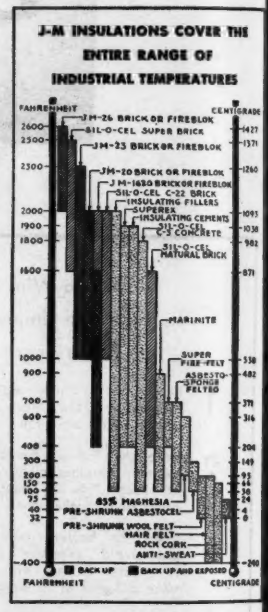
For temperatures to 600° F. J-M 85% Magnesia—the most widely used block and pipe insulation to 600° F. and, in combination with Superex, for higher temperatures. Standard block sizes 3″x18″, 6″x36″ and 12″x36″; from 1″ to 4″ thick.



Furnace insulation up to 2600° F. J-M Insulating Brick and Insulating Fire Brick are available in 7 types, limits from 1600° F. to 2600° F. New Insulating Fireblok, now available are 5 times larger for speedier installation.

For steam lines up to 700° F. Use J-M Asbesto-Sponge Felted Pipe Insulation for efficiency, high salvage and resistance to abuse. In 3-ft. lengths 1″ to 3″ thick.

Insulation to 1900° F. J-M Superex Blocks have high heat resistance, low thermal conductivity. Sizes 3″x18″, 6″x36″ and 12″x36″; from 1″ to 4″ thick.



For more details on these materials, and on the complete J-M Insulation line, write for Catalog GI-6A. Address: Johns-Manville, 22 East 40th St., New York 16, New York.

JM PRODUCTS

Johns-Manville INDUSTRIAL INSULATIONS

FOR EVERY TEMPERATURE . . . FOR EVERY SERVICE

At left, an Elliott geared multi-stage turbine, as built for marine generator drive. Above, Elliott standard single-stage mechanical drive turbine.

ELLIOTT

for TURBINES—

standard or special

"Tailored to the job" has become a stock phrase in speaking of Elliott steam turbines. So many of them are engineered for special conditions, such as the unit pictured at the top. This turbine is one of a large number of identical units designed for a specific wartime service. These turbines each drive three generators in line, through gears which reduce the 5600-rpm. turbine speed to a generator speed of 1200 rpm. They must pass the most rigid tests before acceptance.

The designing of special steam turbin by Elliott engineers starts from the firm fou dation of a standard line of machines several types and a wide capacity rang Representative of this standard line is t Elliott single-stage mechanical drive turbin used with pumps, fans, blowers, pulverize and other auxiliary equipment, direct dri or with built-in gears. Literally thousands these turbines are demonstrating characte istically Elliott reliability in power plants, board ship and throughout industry.

If you have a drive problem, check wi Elliott engineers.

H-68

ELLIOTT COMPANY *Steam Turbine Department,* **JEANNETTE, PA.**

STEAM TURBINES · GENERATORS · MOTORS · CONDENSERS
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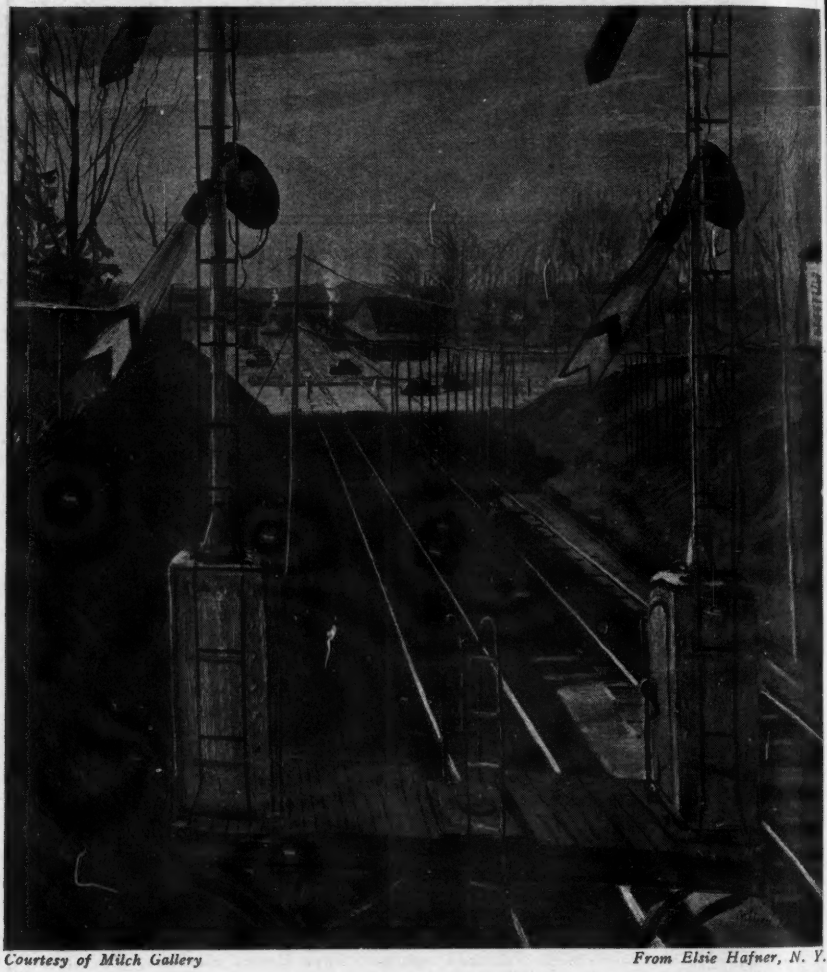
CENTRIFUGAL BLOWERS · TURBOCHARGERS FOR DIESEL ENGINES
TUBE CLEANERS · STRAINERS · DESUPERHEATERS · FILTERS

Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

JANUARY

18	Th	¶ *Canadian Electrical Association opens annual winter conference, Montreal, Can., 1945.*
19	F	¶ *Insurance Economics Society of America will hold meeting, Chicago, Ill., Feb. 7, 8, 1945.*
20	Sa	¶ *Edison Electric Institute Transmission and Distribution Committee will hold meeting, Pittsburgh, Pa., Feb. 8, 9, 1945.*
21	S	¶ *American Gas Association will hold Domestic Gas Research Conference, Cleveland, Ohio, Feb. 8–10, 1945.*
22	M	¶ *American Institute of Electrical Engineers starts meeting, New York, N. Y., 1945.*
23	Tu	¶ *Edison Electric Institute Electrical Equipment Committee will convene, Cincinnati, Ohio, Feb. 14, 15, 1945.*
24	W	¶ *American Water Works Association, Minnesota Section, will hold meeting, Mar. 9, 10, 1945.*
25	Th	¶ *Texas Telephone Association will hold convention, Dallas, Tex., Mar. 12, 13, 1945.*
26	F	¶ *Kansas Telephone Association will hold meeting, Topeka, Kan., Mar. 15, 16, 1945.*
27	Sa	¶ *Canadian Electrical Association will hold annual western conference, Vancouver, Can., Mar. 15, 16, 1945.*
28	S	¶ *Greater New York Safety Council will hold conference and exhibit, New York, N. Y., Mar. 20–25, 1945.*
29	M	¶ *Iowa Independent Telephone Association will hold session, Des Moines, Iowa, Apr. 3, 4, 1945.*
30	Tu	¶ *Edison Electric Institute Commercial Division, Industrial Power and Heating Section, opens session, Buffalo, N. Y., 1945.*
31	W	¶ *American Gas Association Technical Section will hold distribution conference, Chicago, Ill., Apr. 4–6, 1945.*



Courtesy of Milch Gallery *From Elsie Hafner, N. Y.*

Railroad Cut

By Stephen Etnier

Public Utilities

FORTNIGHTLY

VOL. XXXV; No. 2 JANUARY 18, 1945

Surplus Property Disposal —Its Challenge

During coming months there will be released, under the terms of the Surplus Property Disposal Act, and offered for sale, machinery, tools, and merchandise, in vast quantities and great variety. In this miscellany of items, there will doubtless be some which fit requirements of electric, gas, and telephone utilities. It being especially important to utility managements, who may be interested in seeking to acquire some of this surplus property, that they be informed regarding procedure under this act, we publish the following article for their guidance.

BY LEO BARNES

DIRECTOR OF ECONOMIC RESEARCH, RESEARCH INSTITUTE OF AMERICA

THIS war has made our government the world's biggest buyer. War's end will make it the world's biggest seller. It will have a stock of more than $100,000,000,000 worth of thousands of different items, most of them in tremendous quantities, representing the whole wide range of American productivity, from aspirin tablets to mile-long war plants—all to be sold, leased, scrapped, or stockpiled.

Because Congress has passed an especially confusing Surplus Property Act, the government's disposal policy is more up in the air than ever. However, there are certain facts and forces that are already at work shaping policy and action, long before the new Surplus Property Board is functioning at top speed.

The manufacturer and businessman must decide pretty soon what their basic attitude toward leftovers will be. The problem has half-a-dozen angles.

To some, war leftovers will be a new business opportunity. To others, they'll be a cheaper source of supply. To still others, they shape up only as a disposal nuisance. To other powerful groups, they loom largest as a disquieting competitive threat. Frequently, a businessman may take one attitude toward one type of leftover and a diametrically opposed position on another. His place in this conflict of interests will fix his slant in reading and using the following recommendations.

Organization While Government Marks Time

BASIC significance to business of the new Surplus Disposal Act is that it means a considerable pause in both current disposal activities and—more important—in forward planning for the acute leftover problems that will arise after V-E Day. While all regulations of the Surplus War Property Administration continue in effect until superseded by new regulations of the new Surplus Property Board, SWPA can now issue no additional regulations. Improvement and expansion of the present inadequate surplus disposal setup will thus have to wait until the new board is functioning. This lull before the storm is a good chance for the businessman to get his internal organization in shape for buying, selling, or otherwise influencing the surplus market. He should stimulate his purchasing, production, and engineering departments to think in terms of leftovers. This means getting and encouraging men with imagination as well as technical training.

Many leftover items may at first appear unsuitable for use or resale, but further examination frequently shows that they can be readily adapted. A good recent example is surplus canisters for gas masks. These were generally passed up until someone got the idea of reselling them as mothball containers to hang in closets.

"Surplus war property" is any type of property controlled by a government agency and determined by that agency to be in excess of its needs. This means that property which is "idle" or "excess" for a war contractor or even for a major division of a government agency doesn't become "surplus" until so declared by that agency.

THE narrow scope of this definition is best shown by the fact that the government has been compelled to set rules for the disposition of termination inventories and other unrequired commodities *before* they become surplus.

The best way to avoid confusion is to speak of excess property when referring to leftovers which have not been declared surplus. Thus, if a manufacturer buys steel directly from the X contracting company whose construction project has been canceled by the War Department, he is buying *excess* property. However, if he buys the same steel after the War Department has taken title to it, declared it "surplus," and turned it over to an RFC subsidiary for disposal, the manufacturer is buying *surplus* property.

Since a single term is obviously needed to refer to both excess and surplus property, the Research Institute has adopted the word "leftover" to stand for both types of property. After the war, most leftovers will be surplus property. Right now, however, many leftovers are sold as excess property be-

tore they are declared to be surplus. Since businessmen are interested in leftovers whether they are excess or surplus, this article deals with both types.

How Much Leftovers Will There Be?

THE size of the job of surplus disposal has been both exaggerated and minimized. It is easy to do both. Exact figures are frequently unavailable. Then, too, by ignoring the distinction between merchantable and nonmerchantable property, and by lumping surpluses located abroad with domestic leftovers, the size of the problem can be more than doubled. In line with these distinctions, a reasonable estimate of the magnitude of the surplus disposal job at the end of the war will start with a total of close to 104 billions, but will wind up with a final figure of 20 billions or less. Here's how it's done, using official government estimates:

(1) Total leftovers of 104 billions break down into 65 billions of materials, components, finished goods, and other supplies, and 39 billions in plant, facilities, equipment, and real estate.

(2) However, of the 65 billions in supplies, 45 billions in combat ordnance and other military items is chalked off as unsalable except as scrap. Of the remaining 20 billions, 10 billions are crossed out because they are located abroad and, under the terms of the Surplus Property Act, can't be imported. This leaves the more manageable total of 10 billions in merchantable supplies located in this country.

(3) Similarly, of the 39 billions in leftover plant facilities and real estate, purely military installations account for 23 billions, leaving 16 billions in industrial property. But only 10 billions of both these categories is figured to be both salable and located in the United States.

(4) All this adds up to approximately 20 billions in all types of leftovers that may be offered for sale in the United States.

These over-all figures serve to indicate only what the *first* impact of war leftovers will be on the economy. Because most economic actions have a "multiplier" effect, the ultimate business repercussions of surplus disposal will probably be much larger than the 20 billion dollar figure suggests.

In most cases, over-all estimates of available surpluses are not immediately useful to business planning. Therefore the purchaser should be on the lookout for specific figures on the particular types of leftover in which he is interested. These figures are frequently available even though not widely publicized. The purchaser should check

¶ "GOVERNMENT *agencies have first pick of government-owned leftovers. Under the act, the Surplus Property Board must offer Federal agencies the right of 'first refusal'; and state and local governments have second call on many types of property. In the past, a similar requirement has meant that all Federal agencies had to be notified before surplus government property could be offered for sale to the public. This has led to considerable delay, with clearance by all agencies taking up to ten months in some cases.*"

with his Industry Advisory Committee to see if estimates have been given to it. If not, he should urge the immediate preparation of these figures by the appropriate disposal agency.

Who Sells What Leftovers?

THE Surplus Property Act follows present practice by distinguishing between owning and disposal agencies. There are now eight disposal agencies which sell leftovers that have been declared surplus by owning agencies. However, the latter are still empowered to sell: (a) termination leftovers; (b) scrap and salvage; (c) leftovers located outside the USA in areas where there is no disposal agency representative; and (d) nominal quantities of surpluses — defined as substantially similar surplus items at one location whose cost (estimated if not known) does not exceed $2,500.

Here is the present line-up of disposal agencies and the type of surplus property they handle:

(1) *Treasury Department Procurement Division:* Consumer goods (other than food), plus surplus property of all kinds located in Puerto Rico, Hawaii, and the Virgin islands.

(2) *Reconstruction Finance Corporation* (which may act directly or through any of its subsidiary corporations): All capital and producer goods, all real property except that assigned to the Maritime Commission, National Housing Agency, and Federal Works Agency; plus surplus property of all kinds located in Alaska.

(3) *Maritime Commission:* All maritime property.

(4) *Navy Department:* Combat ships or naval auxiliaries.

(5) *War Food Administration:* All surplus food.

(6) *National Housing Agency:* Surplus housing property other than that under the control and jurisdiction of the War Department or the Navy Department.

(7) *Federal Works Agency:* Surplus war property of the class of facilities financed through FWA other than those located on the sites of housing projects.

(8) *Foreign Economic Administration:* All surplus property located outside the continental United States, its territories and possessions, except commercial ships of more than 1,000 gross tons.

The manufacturer can get a more specific item-by-item breakdown of the property, materials, and products assigned to each disposal agency by examining the appendix to SWPA Regulation 1. Copies of this commodity breakdown may be obtained by writing to the Government Printing Office in Washington or from regional offices of any of the disposal agencies listed above. Each agency already has or will set up branch offices for the handling of local inquiries. It's wise to establish early contact with the nearest offices of the agencies the businessman plans to deal with.

Who'll Get the Breaks in Buying Leftovers?

THERE is still a way to go before business gets a detailed picture of just how, when, and where the government's surplus goods will be released. However, the Surplus Property Act contains plenty of clues as to who's going to get favored treatment in obtaining surpluses. In practice moreover, certain buyers are getting and will get favored treatment—either because of successful application of pressure in the right places at the right

Preferential Treatment in Disposition Of Surplus Property

"FORMER owners and tenants get preferential treatment in the disposition of surplus real property acquired by any government agency since 1940. Under the Surplus Property Act, the former owner is entitled to repurchase his property, at either the acquisition price or the current market price, whichever is lower, if it's not required by any Federal agency. If the original owner doesn't exercise this option, any tenant at the time of acquisition is next in line."

time, or simply because a particular surplus situation gives them an advantage.

Government agencies have first pick of government-owned leftovers. Under the act, the Surplus Property Board must offer Federal agencies the right of "first refusal"; and state and local governments have second call on many types of property. In the past, a similar requirement has meant that all Federal agencies had to be notified before surplus government property could be offered for sale to the public. This has led to considerable delay, with clearance by all agencies taking up to ten months in some cases. It is extremely likely that the Surplus Property Board will interpret this requirement of the law as not compelling disposal agencies to offer surplus property to any government body which, because of the nature of the item, obviously could not make use of it or which, for other defined reasons, would not be interested in purchasing it.

REGULAR trade channels are the hardy perennials of surplus disposal. They're to be used as far as practicable. Sales are to be handled so that they won't disrupt normal business. Speculators and promoters are to be barred. Big hitch to this high-minded position is that it's almost impossible to agree on what's "regular" and who's a "speculator." Leftover brokers, already mushrooming all over the country, claim they're in a "regular" line and are beginning to do a thriving business. Then, too, it's not hard to glorify speculation as "risk capital." Just as efforts to bar newcomers from reconversion have bogged down, it's equally likely that there'll be plenty of spots in the surplus picture for adventurers. Established business can minimize this development only by

discarding its lackadaisical attitude toward surpluses. Many sectors of the business community haven't realized that the best way to overcome the competitive threat of war surpluses is to participate actively either in their disposition or in joint efforts to withhold them from the market.

The speediest outlet for most types of leftovers is distributors, who are, therefore, in a key spot to get favored treatment. They can manage larger quantities and cover larger areas than most manufacturers or retailers. They can usually pay higher prices than manufacturers and, while they must buy below the retail level, only a few large retailers can compete with them in the amount of leftover business they can handle. These are natural economic advantages that place the distributor in "first row center" for leftover disposal.

REGIONAL interests won't be neglected. While buyers near the site of surpluses have a definite freight differential advantage, undue geographical concentration of surpluses will lead to charges of regional favoritism. This makes some form of equitable geographical distribution of leftovers pretty certain. This policy, however, will certainly not go as far as desired by the McCarran Senate committee. McCarran recently recommended that on V-E Day Congress freeze all government-owned plants in eleven eastern and northeastern states, and that sale or lease of such plants be made only on condition that the industries desiring the new plants agree to scrap an equal amount of old plant space. However, there's a good chance that supporters of this position will get a good deal of what they're fighting for. Thus, wherever only a fraction of certain types of plants can be sold while the remainder must be scrapped, reasonable preference in selecting the plants to be sold is likely to be given to underindustrialized sections of the country in the South and West.

Former owners and tenants get preferential treatment in the disposition of surplus real property acquired by any government agency since 1940. Under the Surplus Property Act, the former owner is entitled to repurchase his property, at either the acquisition price or the current market price, whichever is lower, if it's not required by any Federal agency. If the original owner doesn't exercise this option, any tenant at the time of acquisition is next in line. While this provision is intended to benefit farmers primarily, it is also applicable to business property of all kinds.

Buying Surplus War Plants

POLICIES for the sale or lease of surplus war plants are probably more uncertain than those of any other aspect of the disposal probem. The Surplus Property Act accentuates this uncertainty. It makes further delay unavoidable by requiring review of most war plant sales by Congress and the Department of Justice.

Sales of the following types of plants which cost the government more than $5,000,000 must be reviewed by Congress:

(a) aluminum plants and facilities;
(b) magnesium plants and facilities;
(c) synthetic rubber plants and facilities;
(d) chemical plants and facilities;

(e) aviation gasoline plants and facilities;
(f) iron and steel plants and facilities; and
(g) pipe lines and facilities used for transporting oil.

These seven types of plants and facilities may, however, be leased for as long as five years without congressional review. Note that aircraft plants and facilities, aircraft and aircraft parts, shipyards and related facilities, transportation facilities, and radio and electrical equipment may all be sold in lots of $5,000,000 or more without congressional review.

Sale or lease of any plant which cost the government $1,000,000 or more must be okayed by the Attorney General. This means that more than 15 billions of the government's 16-billion-dollar investment in war plants will receive Department of Justice anti-monopoly scrutiny.

THESE provisions of the Surplus Property Act should make prospective purchasers move cautiously in buying any war plant until congressional and Department of Justice policies are clarified. This is true whether a particular plant costs more or less than $1,000,000 or $5,000,000, and whether or not the possible purchaser has an option to buy. What is done with the larger plants in the seven industries listed above will not only be decisive factors in those industries but will affect the entire economy of post-war America. While the decision on purchasing war plants should usually be delayed, there is no need (a) to stop gathering information on what surplus plants are available, or (b) to halt tentative negotiations on properties in which the prospective buyer is interested. A list of plants and plant property owned by the Defense Plant Corporation is now available. This so-called "briefalog" groups plants by state and describes them briefly. It also includes names of the regional representatives who should be contacted if the buyer is interested. For the list, write to Industrial Facilities Section, Defense Plant Corporation, Washington 25, D. C., or inquire at a local RFC office.

DPC is going ahead with its disposal plans despite the uncertainty created by the Surplus Property Act. It is circularizing option holders to determine whether they plan to exercise their option to buy. Where lessees are willing to buy only at less than the option price, DPC will usually seek higher bids by advertising, direct contacts, etc.

LARGER firms buying leftover property of any type and any firm, large or small, engaging in efforts to

¶ "DETERMINING *a fair price for leftovers is a problem that will produce many headaches in the procurement agencies, as well as in SPB and OPA. There are opposing pressures in both government and business. Within the business world, manufacturers of new goods want high prices to kill off competition of leftover products. But business buyers want low prices for profitable use or resale.*"

keep leftovers off the market, should keep a weather eye on the Department of Justice. The Surplus Property Act gives the Attorney General specific additional powers, but does not diminish in any way his blanket authority under existing antitrust laws. By the terms of the act, the Attorney General possesses virtual veto power over the disposition: (a) of government-owned plants or other property which cost the government $1,000,000 or more; and (b) of government-owned patents, processes, techniques, or inventions, irrespective of cost.

Whenever any disposal agency begins negotiation for the disposition to private interests of such property, it must promptly notify the Attorney General of the proposed disposition and its probable terms or conditions. Within ninety days after receiving such notification, the Attorney General is to advise SPB and the disposal agency whether the proposed disposition will violate the antitrust laws. Even if no advice is received from the Attorney General within ninety days, purchase of property covered by this section of the law without his approval is a risky proposition, since absence of approval within the stipulated period does not prevent subsequent antitrust prosecution. Therefore, the purchaser should clear with the Department of Justice whenever there's the slightest doubt about his antitrust position.

Making the Most of Negotiated Sales

WHILE negotiated deals, sealed bids, and open auctions are all being used in selling leftovers, the tide is running strong in favor of negotiated sales. The Surplus Property Act permits sales to be made without regard to any existing legal provision for competitive bidding. The law also contains a specific clause releasing disposal officials from personal liability for losses in surplus sales they negotiate in good faith. Fear of personal liability has been the chief reason why government officials were generally inclined to favor sealed bids. Bids and auctions will continue, however, where speed isn't too important and where they're customary in normal sales. For instance, it's an old Missouri custom to sell mules at open auctions. It's likely that leftover Army mules will frequently be distributed in this fashion.

High or Low Prices?

DETERMINING a fair price for leftovers is a problem that will produce many headaches in the procurement agencies, as well as in SPB and OPA. There are opposing pressures in both government and business. Within the business world, manufacturers of new goods want high prices to kill off competition of leftover products. But business buyers want low prices for profitable use or resale. These opposite attitudes are reflected in the approach of OPA and SPB to the surplus pricing problem. While OPA's primary interest is to set price ceilings to prevent users from overpaying, SPB's chief concern is to set price floors to assure the greatest possible return to the government.

Present balance of forces is still in favor of the high-price people. Because of wartime shortages, leftovers could frequently be sold above ceiling prices for corresponding new products if OPA had not applied ceilings to such sales.

Several thousand rubber boats

Cash or Credit?

"LEFTOVER sales have undoubtedly been discouraged in many cases by the rigorous cash terms usually in effect. This deficiency has been remedied by the Surplus Property Act, which authorizes any disposal agency to make sales for cash, credit, or other property. The only restriction on credit is that, in the case of (a) raw materials, (b) consumer goods, and (c) small tools, hardware, and nonassembled articles, no extension of credit shall be for a longer period than three years."

rejected by the Army were grabbed up in a day or two—and at pretty high prices—when put on sale recently by a big New York department store.

Similar to price floors but usually less rigid in effect are special pricing rules for specific commodities. Sometimes, as in the case of surplus standard machine tools, these take the form of depreciation formulas. More usually, as in the case of surplus aircraft, they involve pricing rules appropriate to a particular commodity.

IN addition to price floors and specific pricing rules, a continuance of the general 75 per cent pricing formula now used in setting prices for termination leftovers can be expected. Assumption is that a 25 per cent profit margin isn't sufficient to attract speculators, but is big enough to encourage legitimate distributors, dealers, and war contractors to dispose of leftovers. However, it's a good bet that the 75 per cent formula topples by the time hostilities end. One big loophole that exists right now is the permission to sell at less than 75 per cent of cost or market price after a "reasonable" time. The term "reasonable" has been left conveniently undefined so that, if necessary, lower prices can be quickly established. While returns from leftover sales won't hit the low of World War I—35 cents on the dollar—they'll almost surely be closer to 50 per cent than 75 per cent.

Small lots—so-called nominal quantities worth less than $2,500—and leftovers from contract cancellations where the entire termination claim is less than $10,000 before disposal credits, offer buyers an immediate opportunity for lower prices. For such transactions there is no price floor. They present an excellent opportunity for small business to get leftover materials and products at lower than usual prices.

Cash or Credit?

LEFTOVER sales have undoubtedly been discouraged in many cases by the rigorous cash terms usually in effect. This deficiency has been remedied by the Surplus Property Act, which authorizes any disposal agency to make sales for cash, credit, or other property. The only restriction on credit is that, in the case of (a) raw materials, (b) consumer goods, and (c) small tools, hardware, and nonassembled articles, no extension of credit shall be for a longer period than three years.

Guaranteed or As-is Merchandise?

ONE knotty problem in selling leftovers is the extent to which merchandise will be guaranteed. While nobody expects that the government will offer a 90- or even a 30-day warranty on items like jeeps, purchasers can legitimately demand: (a) that surplus property be accurately described and classified by disposal agencies, and (b) that the goods when delivered are exactly as described when purchased. If errors in quantity or quality turn up when merchandise is delivered, appropriate adjustments in kind or in price differentials should certainly be permitted. With businessmen in charge of most sectors of the surplus disposal setup, this development is extremely likely.

Surplus nomenclature will be modeled on regular trade terms, so that buyers will frequently be able to know what is being offered without visual inspection. Where inspection of goods is necessary, however, it's likely that a system for showing adequate samples of merchandise at regional disposal offices will be worked out.

Keeping Leftovers off the Market

WHILE the policy—first enunciated in the Baruch-Hancock report—of selling "all you can as soon as you can" will be the rule for most surpluses, there are a number of fields in which this objective cannot be obtained without business dislocation. There are industries in which postwar surpluses will be so large that they could, if released, saturate the market for years to come. Disposal and price policies that are entirely satisfactory for goods in short supply may be definitely ruinous for overabundant commodities like basic metals and minerals, machine tools, and many metal products.

To control this situation the government has available—in addition to the device of price floors previously discussed—three main techniques: (1) stockpiling of "strategic" materials; (2) restricting importation of leftovers; and (3) withholding from the market any surplus not covered by the preceding controls.

1. STOCKPILING *encouraged.* The Surplus Property Act provides for the stockpiling of strategic metals, minerals, and other materials. In most cases, such surplus stocks will be frozen for at least a year. The only exception to this rule is that owning agencies shall not transfer to the stockpile any amount of strategic minerals and metals which WPB estimates American industry will need in the next six months for purposes other than war production. To meet this deficiency, owning agencies may dispose of minerals and metals at current market prices. Strategic minerals and metals include: copper, lead, zinc, tin, mag-

nesium, manganese, chromite, nickel, molybdenum, tungsten, mercury, mica, quartz crystals, industrial diamonds, cadmium, fluorspar, cobalt, tantalite, antimony, vanadium, platinum, beryl, graphite (and aluminum or any other minerals or metals which the Army and Navy Munitions Board may determine to be necessary for the stockpile).

It is important to note that the War and Navy departments have practically unlimited power to add products to the stockpile. They can request that other "strategic" materials in addition to metals and minerals be added to the stockpile. Moreover, strategic metals and minerals are defined broadly to include partially and completely fabricated articles of which the principal components by value consist of such minerals and metals. This offers a loophole by means of which almost all metal products can be stockpiled. Theoretically, to be sure, fabricated articles which may be disposed of at values "substantially" in excess of the metal market price of their component minerals and metals are excluded; but the act nowhere defines what is meant by "substantially."

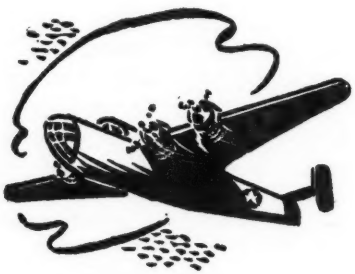
2. IMPORTS *of surpluses restricted.* The Surplus Property Act sets up the policy of prohibiting, so far as feasible, the importation into the United States of surpluses sold abroad or exported from this country.

3. WITHHOLDING *surpluses from the market.* The Surplus Property Act marks a shift in the use of government stockpiling from accumulating critical materials in order to meet a shortage to withholding them from the market in order to combat an oversupply. However, the stockpiling provisions of the act can be made to apply to fabricated products and nonstrategic commodities only by an extremely loose construction of their meaning. To withhold such items from the market when desirable, SPB is therefore expected to resort to its general authority to specify the "times at which" leftovers may be sold.

WHILE the Surplus Property Act makes no official provision for the use of Industry Advisory Committees, it is expected that SPB and the disposal agencies will continue to avail themselves of the advice of WPB IAC's, pending the formation of special committees for surplus disposal. There is some congressional pressure for specific legislation authorizing Industry Advisory Committees to be set up to help determine specific surplus disposal policies. Chances are that the Attorney General will try to circumvent enactment of such legislation by writing a letter to SPB specifying the extent to which IAC's may be used in surplus disposal activities. The immunity of IAC's from antitrust prosecution covers their surplus disposal activities—as in other fields—only so long as their functions are purely advisory. Committees may not take action on their own initiative on recommendations they have submitted, nor may they try to determine policies for an industry, attempt to compel anyone to comply with any government request or order, or make agreements as to specific industry action.

Plans for withholding surpluses from the market may also be developed by a small number of firms in an industry, rather than on an industry-wide

basis. Any such joint action plan should have specific clearance from the Department of Justice. The proposal must (a) be sharply defined and definitely limited in time, (b) make clear how its operations will help smooth reconversion in industry, and (c) that it doesn't exclude competitors or bar new entrants. Pending formation of Industry Advisory Committees by the SPB or disposal agencies, applications for approval should be sent to the neighboring WPB Industry Division. If WPB approves the plan, it will be passed on for clearance with the Department of Justice.



Rocket Transit for the Future?

ROCKET *engine power forms the basis of large new postwar industries, G. Edward Pendray, assistant to the president of Westinghouse Electric & Manufacturing Company, said recently, reporting that engines already developed could cover the 260 crow-flight miles between Cincinnati and Pittsburgh in five or six minutes.*

Speaking before Cincinnati members of the American Institute of Electrical Engineers and the American Society of Mechanical Engineers, Mr. Pendray declared that other factors such as projectile or plane design and adequate control preclude realization of such service "for mail, express, or other cargo" for at least ten years. Mr. Pendray is secretary and a founder of the American Rocket Society.

"With the Navy spending $100,000,000 a month on rockets, the Army asking for an appropriation of $150,000,000 for them, and millions being spent in the development of jet propulsion engines and airplanes, we can no longer look upon rocket power as a dream of the future," he said. "It is already big business."

Radio and the New World

Of the many vital postwar problems to be solved, if established peace is to prevail, those relating to this form of communication may, in the opinion of the author, prove to be among the most vexatious.

By HERBERT COREY

The war was over. All the nations were friends again. Each knew the rocket bomb plans of the others and it began to look as though another war actually would not pay. The new plastic money seemed to be working about as well as gold used to work. Optimists thought that within a few years the aviation tangle would be unscrambled. Then Albania threw the first stone.

She erected a huge broadcasting station. A station that was as far outsize of tomorrow as are the four supersenders of today the United States now operates on its coasts. They sent the news of the American election around the world. If their operators had wished they could have jammed many of the important channels. There would be no way of keeping them out, any more than the great German official stations during the Second War had any way of keeping out the ghost voice which jeered when Der Fuehrer talked to his Nazis and the other Germans:

"Fooey," grunted the ghost. "Der Fuehrer iss a dumkopf. Ge-toss him a rug."

Albania was not satisfied with the world-wide radio arrangements. The King had just married a new American wife whose father had so much plastic money that imagination was nauseated and she demanded Frequency Modulation and Television and electronic footwarmers for the Albanian winter nights — the King having proven rather less than caloric—and Albania had been turned down. She had pointed out that she was one of the small friendly nations but that she was prepared to get unfriendly if she was pushed around any more.

Her huge new supersender would enable her to jam waves from Tirana to Moose Jaw, and what could be done about it? No nation wanted to go to war to spite the Queen. If the United League ordered out its Protective Forces all the other small friendly nations would yell murder, they being all set with batteries of megaphones anyhow. It was doubtful whether the

Peace Treaty specifically provided against Germany bootlegging hot waves to the Queen's cold feet, and if such a provision could be interpreted into the Treaty millions of humanitarians would outcry against this incredible barbarity.

Therefore Albania got her way.

And all the other small nations began to whimper about their mistreatment.

So the Big Three and a Half nations gathered up all their radio fats—telephone, telegraph, cables, land wires, facsimilies, heat and power waves—and threw them in the fire.

NONE of this is impossible. It may sound a little marijuana, now that we are near enough victory to begin to develop soft spots, like an apple that has been left on the radiator. But it is not impossible. Only the friendly nations are being considered, on the assumption that we will be able to make the enemy nations behave when the war is over. Tariff pacts will be made between nation and nation, as always, and there will be no reason for other nations to interfere if Canada and Patagonia cannot agree. If Russia does not want our planes to fly over her steppes she can refuse without making it a *casus belli.* If France insists on sticking a 10-cent stamp on letters mailed to the United States and only a 6-cent stamp on letters to Brazil we might be annoyed, but that's all. These things are in essence debates between nation and nation.

But one little pig-eyed nation could jam the radios of half the world and nothing could be done about it except go to war.

Or knuckle down.

This illustration of a possible improbability is offered to emphasize the complexity of the job now being considered by the radio representatives and the governments of all the friendly nations. This is not literally true at this moment, some of the governments having had their attention distracted. But it will be true eventually, for radio is the one thing that covers all humanity. No one individual knows at this moment what scientists may be able to do with the spectrum tomorrow. The needs of the war may have jumped radio use and knowledge ahead by twenty years. When military secrecy is lifted experimenting will begin as of AD 1965 instead of 1945. No scientist will say today:

"Well, we have come to the end. There is nothing more to know about radio or to do with it. We have it all."

IT is conceivable that when a nominal peace is declared the world may be separated into a series of armed camps. The United League, by whatever name it may be called, is being set up to prevent such a catastrophe, but already cracks are appearing in the structure. It may be possible to weld them and make the league safe. But human nature being what it is, the antagonisms which have plagued Europe for 1,000 years may reappear, and be added to by the fresh antagonisms created by the addition of the United States to the struggle for safety and dominion.

Every sane man hopes that nothing of this kind will develop.

There is no space in which to carry out this unpleasant thought to the minor decimals.

It is at least possible that groups may be formed under the heading of Britain and Russia and the United States and

France and Asia and Latin America with smaller nations figuring as pawns and accessories, and with the reasonable certainty that sooner or later—sooner, if the Nazis are destroyed—Germany will play its part. For Germany cannot be destroyed.

The one thing these nations and groups will have in common is radio. Cable and wire communication can be controlled by nations that are nervous or hostile or disposed upon the international fences. Radio cannot be controlled. Not even today's radio. No one will have forgotten the incident in which the Byrd expedition to the South Pole found its official means of communication cut off by a storm, and one of its radio operators rigged a puny little sender out of bits and pieces and an amateur in the United States caught the feeble message on his $40 outfit and got it through to *The New York Times*. That is being repeated today in every one of the warring European countries.

THE problem under present consideration by all the governments in the world is what to do about radio in peacetime.

Certainly all the major friendly governments are considering this. The major enemy governments may be giving it only academic consideration, for they may not be given a voice in postwar radio plans. The minor states must be doing their best to listen in to the deliberations of the great powers, for a minor state may be certain of at least a nuisance value after the war. A small Latin American or European state, for example, might refuse radio privileges to all nations but Germany or Japan. Kent Cooper, head of the Associated Press, told in *The Saturday Evening Post* recently how the greater European powers drenched the world with their propaganda to our disservice.

Yet a cross-grained small power might assert its right to independence. In which case it could only be controlled by some form of force. Other small powers would in their turn resent this. The current case of Argentina may be cited in evidence. No matter how loyal to the cause of the United Nations they are, some of the Latin American countries are critical of our attempt to control Argentinian acts. The censorship bars us from knowing all the facts, but some of them have come through. The final agreement of the United League might require the adhesion of all the smaller states to a clause ceding the right of control to the Big Three and a Half countries. A smaller state might decline to sign. So

¶ "RADIO *cannot be controlled. Not even today's radio. No one will have forgotten the incident in which the Byrd expedition to the South Pole found its official means of communication cut off by a storm, and one of its radio operators rigged a puny little sender out of bits and pieces and an amateur in the United States caught the feeble message on his $40 outfit and got it through to* THE NEW YORK TIMES. *That is being repeated today in every one of the warring European countries."*

it could only be compelled to sign by force. Force is aggression, and aggression is what a state thinks it is.

SUMNER WELLES wants the world states to make speech and religion free.

But some of the smaller states are already beginning to define any pressure to this end by the great states as unqualified aggression.

Britain in effect owns the British radio and cable networks, although private companies do the operating. The British post office is tied in and controls the telephone and telegraph. The combination is a lulu. No communication to or from the British Isles escapes the government touch at some point. American businessmen have found this to be a fact.

Of course Britain wishes to retain this position. Britain must have export trade if she is to live. That is not only assented to but it is being shouted aloud. It is to our interest that she retain her health for she is not only our best customer, but if or when the Third War breaks she is the only country in the world on whom we can count for more or less coöperation. A French-British group seems certain, and if the United States is tied in the combination could dampen down any Third War sizzle that might be threatening, assuming that Russia does not start anything. No one thinks Mother Russia will. So they say.

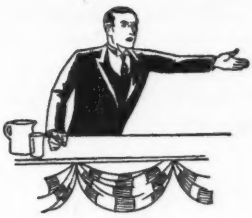
Therefore it is definite and certain that when peace returns we will give British trade the oxygen treatment.

BUT we must make up our minds as to the precise point at which our generosity becomes unwisdom. We too need export trade. Businessmen and industrialists, as distinguished from economists, say that if our national income is to be maintained at a level which will enable us to pay our debts and have running water in our bathrooms, we must look on foreign trade as being as important as our domestic business. Having the interests of both countries in mind we appear to have our choice between:

An over-all agreement between the two governments by which world trade and raw resources shall be allocated between them. That would be totalitarianism. If that were to come about the present discussion about world-wide radio control is wasting time. The British Board of Trade and an equivalent body on this side of the Atlantic would issue orders. There can be little doubt that the British preference would be for government-controlled trade. Every sign points that way.

Or we could insist on the maintenance of individual enterprise. We grew up in it. We prospered in it. The generally held theory that Americans have been so enormously successful because of our raw resources may be at least challenged, for the war has demonstrated that other countries have even more of a great many things than we have. They merely did not make use of them as we did. Government clerks told their businessmen what they could and must do. Our men got out and hustled as, for example, our telephone companies did. Telephoning isn't a raw resource—

NO matter how kind and neighborly we may be after the war to Britain and any other needy country it seems evident that we should expand



Importance of Foreign Trade

". . . we must make up our minds as to the precise point at which our generosity becomes unwisdom. We too need export trade. Businessmen and industrialists, as distinguished from economists, say that if our national income is to be maintained at a level which will enable us to pay our debts and have running water in our bathrooms, we must look on foreign trade as being as important as our domestic business."

our communications — radiotelephony and telegraphy and wire and cable services and fast air mail when civilian flying is again possible—not only for present convenience but for future protection. The day might come when we will wish to stop giving, or find it impossible to go on tossing, our good dollars away out of sheer kindness of heart.

If we then find that we cannot get into ports with our radio and cable stations, into which we could get today—while we are still giving—and be met at the city gates by mayors in silk hats and dancing drum-majorettes, we can blame ourselves. No proposal which would injure any other nation has yet originated in America. But there are other nations which would trim us down to taproot size.

Our privately owned companies cannot buck the British government and they know it. When we, the British and the Americans, have recovered Indo-China and Madagascar and the Dutch East Indies for their former occupants we will want to have a right of access. Now is the time to get it. There is big radio business ahead in China when we have wiped out the Japs. A businessman in New York will wish to talk with a customer in Shanghai. No one knows what the Chinese position might be. Recent events have somewhat chilled our Chinese honeymoon. The French were pretty free with Lafayette and the Statue of Liberty but they have always been—as they should be—right canny in business matters. Russia plays close to her buttons.

THE State Department and the other departments concerned and the FCC insist that our interests are to be protected. No one doubts the sincerity of this statement. The nature of the protection still remains obscure.

It is fair to assume that all the European governments will directly control all means of communications outgoing and incoming. If this pill looks a little bitter to us some apricot jam may be put in the spoon. Private capital may be permitted to take a chance. Subsidies may be granted. Dividends may be guaranteed. But the prime minister in the palace will be the boss. The smaller countries will okay whatever the big ones say.

This is and has been the European system in all matters affected with international relations. It is argued with conviction that the continuous ferment of commercial and maritime and political rivalries makes it compulsory.

Assuming that the preceding statements are true—and they are believed to be—the United States is left as the sole champion of private ownership in the field of international communications.

In every other country in the world —pending the readmission of Germany and Japan into world fellowship, if ever — international communications will either be a direct function of government or in effect an arm of government through part ownership, legal restrictions, or subsidies.

A FORMULA must be devised by which our government may be able at need to speak for all of our international communications interests and with authority, and yet not interfere unduly with the rights of management.

The British government can, if it wishes and our government consents, establish a BBC station on the Aleutian islands. Its only value would be political although it would be a commercial station in the books. If our government wished to put up a station on one of the Malayan islands it would be nakedly political in its functions. The government has no power to direct one of the American radio companies to do anything of the kind. If a clandestine arrangement were made to subsidize and control such a station it would be immediately discovered and highly suspect. Various suggestions have been made for government part-ownership or for government representation on boards of directors, or for government subsidies under more or less transparent cloaks. None have been welcomed by the interested companies, which fear any plan of the kind would be merely an introduction to full government ownership.

No one has ever suggested that in unsettled periods the American communications companies would not be completely at the service and control of the government. Their loyal coöperation has been demonstrated.

The situation is full of headaches.

HUGH BAILLIE, head of the United Press, on his return from Europe, restated his conviction that the free exchange of information between countries minimizes the danger of war. But his experience has been that some of the European countries have not wanted their people to have the truth.

"Sometimes we found that the newspapers were afraid to print it after they got it."

It is conceivable that a privately owned American company might find its freedom of operation in an European country interfered with. If it had no governmental backing it would be helpless. Our government could

threaten reprisals and perhaps get some satisfaction if both countries were members of an international radio control body. If the dispute were country *versus* country it is not likely that anything would happen. Mussolini interfered with the transmission of news to Italy. If our State Department had protested it could only have hoped to hear one of Mussolini's more violent yowls.

The question at this point, however, is what will be the nature of the relations between privately owned American companies and the American government.

The American Telephone and Telegraph Company may be cited as an example.

It should be stated at this point that nothing in this article traces to the AT&T, or the FCC, or any of the other organizations. It is simply the expression of one observer, who has obtained his information from many sources, and formed his judgment for himself.

So far as can be discovered no criticism of the AT&T has been voiced by anyone, with the exception of the few who shout that it is a monopoly, and are so obsessed by that word that they would break it down and swap competence for chaos. During the war it has worked so closely with government that it has been in effect a part of government. In peacetime its network covers the world so nearly that an American may talk to any country which has as many telephones as Lowell, Massachusetts. This foreign service has been built up at its own cost and loss. It has never paid a profit and it may never pay one until the whole world is again peaceful and busy. The AT&T wishes to maintain it not only because it may pay sometime, but because it is an immense convenience to its domestic users. The government wishes it continued.

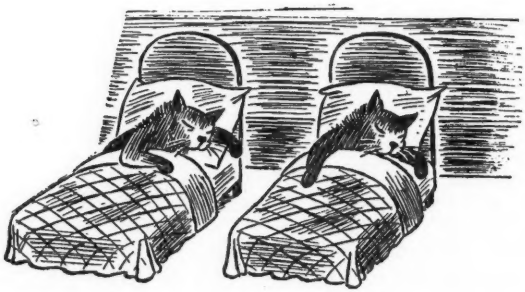
Recent history proves that in times of stress the AT&T would coöperate fully with the government. No one questions that. To be realistic about it the company would have no choice. The company has followed the American practice of reducing rates and thereby expanding the volume of business.

No quarrel there. But it must have some protection against radar and television, which gobble up frequencies like famished men do the GI rations, and Frequency Modulation, which is coming up fast. FCC Commissioner Jett recently pointed out that the use of radar coastal protection by British steamships on our coasts could raise hell in every port they enter.

¶ "Our *privately owned companies cannot buck the British government and they know it. When we, the British and the Americans, have recovered Indo-China and Madagascar and the Dutch East Indies for their former occupants we will want to have a right of access. Now is the time to get it. There is big radio business ahead in China when we have wiped out the Japs. A businessman in New York will wish to talk with a customer in Shanghai.*"

Such protection can only be given by the government.

SOME governmental control must be exercised in order that the frequencies needed by the departments—Army and Navy, Commerce, State, and so on—shall be protected and, at the same time, that the commercial service shall not be impaired by the greed of some of the minor departments which do not need frequencies for their relatively slight use. There is room for fear that some elements of the government will ask that several government representatives shall be placed on the board of directors, which might result eventually in an attempt to control operations, which would be a camel's nose of government ownership —and definitely an interference with individual enterprise, which made the country great and which led to the world net of radiotelephones and telegraphs. Lord only knows what's coming.



Modern Phone Man Finds Bed Useless

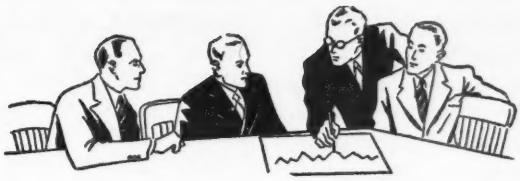
THE *thing O. M. Anderson, secretary and manager of the Huron (Kansas) Telephone Company, seemingly wants most is a little time in bed and fewer state and government reports to file.*

He sent a couple of reports last spring to the state department of revenue and taxation and, while fighting the manpower problem, hoped to find time some day to get other report blanks on his desk filled out. In a letter to Chairman Ljungdahl of the state tax department, Anderson said:

"Enclosed are two reports and if God keeps my strength up, I will in a few days get all the other reports to you. Please inform the departments so they will rest easier about it.

"Folks, I have been and am yet doing five people's jobs; I absolutely work day and night. I never go to bed. It is over a year since I was in bed. Every few days I drop down on a lounge and relax and sleep from an hour to three, and up and at it again.

"You have been kind and I will send the balance of the reports in soon."



Original Cost in Public Utility Accounting

PART III.

In this, the concluding article of the present series, the author declares that an investment should not be condemned or devitalized solely because it is in intangibles rather than in material goods; that the intrinsic rights of all should be recognized; that equity will then flourish and original cost accounting endure.

BY JOHN H. BICKLEY

IN challenging the retention in the accounts of purchased intangibles, the opponents of this practice cite cases in which manufacturing companies have written off such items.[1] But this procedure is not universal, neither does it establish an accounting principle or rule that would make amortization mandatory. And even though a manufacturing enterprise has written off intangibles, such assets may continue to exist in fact and to have value.

Moreover, it is a mistake to set up the accounting practices of manufacturing companies as all-prevailing criteria for regulated industry. Conditions are so different, as in the pricing of products or services, that the same accounting standards and methods are not entirely applicable.[2] The prices charged by manufacturers are free from public control in normal times. Earnings may be whatever can be realized and they are not related by government prescription to the value of properties or to the investment therein. For this reason, the extinguishment or retention of intangibles as an accounting record has wholly different implications from those existing with utilities. A manufacturing establishment may write off its intangibles with immunity, but this is scarcely so for a public utility, especially according to FPC views. Reality suggests that when a public service enterprise writes off any asset, it will have little prospect of being allowed a return thereon, particularly by the FPC.

[1] It should be noted that manufacturing companies measure the cost of intangibles purchased in connection with acquisitions of going properties as the excess of acquisition cost over the sound value of physical property, and not as the excess over original cost.

[2] The original cost procedure in public utility accounting is itself justified by the peculiar nature of public utilities.

Capitalization Rate and Period Of Earnings

CHARLES W. SMITH, accounting witness for the Federal Power Commission, reasons that the capitalization of earnings at a certain percentage rate is tantamount to the expectation of earnings for a definite period of years. Thus, a capitalization rate of 10 per cent is construed to be the purchase price of earnings for ten years, and that the earnings may be expected for this period only. He explains that this method is used to estimate a price that can be paid for intangibles, but apparently fails to see that the amount of "ten," not "ten years," is merely the reciprocal of 10 per cent.

The process he seems to have in mind is this: The purchase of a going concern is contemplated. In order to estimate the amount to be paid, these steps are taken:

1. An estimate is made of normal earnings.
2. An estimate is made of the sound value of tangible assets to be acquired.
3. A percentage rate of return is applied to the sound value of the tangible assets and the dollars of return thereon thereby estimated.
4. The estimated dollars of return on tangible assets are deducted from total estimated normal earnings, and the balance of earnings is assumed to be the return on intangible assets.
5. The apparent earnings on intangibles are capitalized at some rate, and a value for the intangibles estimated.
6. The purchase price is measured as the sum of items 2 and 5, above.

Fortunately, in a business transaction of this kind, such theoretical and rigid views do not prevail. Business judgment, if sound, is more flexible and is not guided solely by arithmetical computations of the character described. The price paid for a going concern, while having some relationship to such objective data as are available, is a result, in the last analysis, of bargaining between buyer and seller. In the bargaining, statistical indications and estimates are usually compromised.

THE informed investor would know at the outset that the estimate placed on the tangible assets would be essentially for classification of total price paid, particularly for depreciation expense and income tax purposes. The percentage rate applied to tangible assets, while perhaps being related to the cost of money, including a return on common stock, would not be exact, because exactness is unnecessary in the study. The use of this rate, say 10 per cent, is not translatable into earnings for ten years. It is the same as ten times the earnings. The capitalization of earnings above those estimated on the tangible assets does not mean that the life of the intangibles is the reciprocal of the percentage rate, nor does it yield the price that will be paid for a business in excess of the estimated value of tangible property.

The investor is concerned about total returns that can be obtained from a venture. He may pay the present worth of a series of earnings over the life of the enterprise, if there is a basis for this computation. More often he cannot forecast the entire period of earnings, so he estimates average earnings for a practically indefinite period and capitalizes this amount at some percentage rate. In his review of all pertinent facts, he considers, along with other things, the value of the

tangible assets to be acquired and may give these more or less weight than other assets, depending upon the nature of the business and the particular conditions obtaining. But, specifically, the estimate of tangible property is largely for the purpose of future depreciation charges. In any event, the application of a capitalization rate is not a measurement of the life of either tangibles or intangibles, and the distinction between the two groups of assets is a classification process.

WHEN a utility purchases a going property it normally expects to operate in the area for an indefinite period. When the price is based on expected earnings, the earnings are estimated at an average amount to be realized indefinitely, although there may be expectation of a gradual increase, or even decline, beginning with the date of acquisition and projected for a forecastable period. In the estimate of earnings, consideration will be given to such matters as vulnerability to rate attacks and the possible effects on earnings, just as attention will be directed to economic conditions, volume of business, wage scales, material costs, tax levels, etc. But if the period of forecast is ten or twenty years, it is not assumed that the business will survive only that long or that it fixes the life of the earnings. The use of a limited period of forecast simply evidences the limitations of a forecast.

As an illustration, average annual operating net income may be estimated at $650,000. The purchaser may capitalize these earnings at 6½ per cent and pay $10,000,000 for the property. But the purchasing utility does not assume that the 6½ per cent is the equivalent of $650,000 annual earnings for 15.3846 years and that at the end of that period the investment will be lost. The capitalization rate is not even translated into years, because this kind of relationship does not exist.

TO pursue the illustration further, the sound value of the physical property acquired in the purchase might be estimated at $9,000,000. The remaining $1,000,000 of the $10,000,000 purchase price would be attributed to intangibles—going value, integration value, or service-area value. Nevertheless, this classification of investment for accounting purposes does not alter the expectation of average earnings of $650,000 annually for an indefinite period. If the $650,000 is realized, and as long as it is, the entire $10,000,000 is a sound investment and the intangibles are as real and as good as the tangibles. If, on the other hand, the earnings realized are only $325,000, instead of $650,000, then on the

¶ *". . . it is a mistake to set up the accounting practices of manufacturing companies as all-prevailing criteria for regulated industry. Conditions are so different, as in the pricing of products or services, that the same accounting standards and methods are not entirely applicable. The prices charged by manufacturers are free from public control in normal times."*

basis of a 6½ per cent return the property proves to be worth only $5,000,000. Some or all of the intangibles fail to materialize and some of the physical property is lost. An impairment throughout the array of fixed assets ensues.

The association of a percentage rate of capitalization with an expected period of earnings is reflected by similar thoughts expressed by other employees of the Federal Power Commission:

> This process of capitalizing anticipated earnings is no more than a process of lifting yourself by your bootstraps . . . you are merely going through a hocus-pocus by which, when you have accomplished it, a commission in fixing rates must then accept that as a basis for giving you the rates which you have anticipated you will get.
>
> When a prospective purchaser is contemplating a purchase of a public utility property, does he, in determining the price he should pay, capitalize anticipated earnings for an indefinite period of time?
>
> In determining the purchase price he is to pay, I think you said there is a practice of multiplying the earnings by a certain figure. Doesn't that involve a limitation as to years?
>
> Suppose he concludes that the earnings would last only fifty years. Does he, in determining the price he is going to pay, say that he is willing to pay the seller fifty times the one year's earnings?
>
> And he has made an investment at such a rate that the income merely repays the investment; isn't that so?
>
> Suppose he is interested in making an investment, and the security merely has a 10-year period to run, I wanted to know . . . whether the purchaser, in determining the price he would pay for the security, capitalizes the anticipated income for the entire 10-year period.
>
> If he pays ten or twenty times the annual income then at the end of the ten or twenty years he has recouped his investment, is that right?

THESE and similar statements and questions suggest that when a public utility property is purchased at a certain number of times estimated earnings, or when earnings are capitalized at a given percentage rate, there is thereby decided the period of earnings. This is patently fallacious.

The questions suggest further either of two other views. One is that the investment should be written off over a period of years found by a division of the percentage rate into 100 per cent. Simply stated, the life of an investment is not measured in this way. The alternative view is that when the aggregate of earnings equals the amount paid for the property, the investor should be satisfied and surrender his claim to the initial investment. The latter is clearly the meaning of the last question quoted above.

In the association of a rate of capitalization of earnings with the number of years the earnings should be expected, there is a distressing confusion between return on and return of investment. When an investor purchases for $1,000 a bond bearing 5 per cent interest, the 5 per cent does not fix the term of the bond at 20 years, and it certainly does not mean that the investment value will expire in 20 years, the number of years in which the interest would amount to $1,000. The bond may mature in 5, 10, 20, 30, or 100 years. The 5 per cent is the annual rate of return, and even though $250, $1,000, or $5,000 is received as interest, the repayment of the principal is expected.

IN connection with utility property, the anticipated rate of return might be received for 20 years or much longer, and there is nothing intrinsically inequitable or unfair if it is. There would be indication of a wise investment. And if the rate of capitalization is 6 per cent, it does not follow that because 16⅔ times 6 per cent is approxi-

Flexibility of Business Judgment

"BUSINESS judgment, if sound, is more flexible and is not guided solely by arithmetical computations of the character described. The price paid for a going concern, while having some relationship to such objective data as are available, is a result, in the last analysis, of bargaining between buyer and seller. In the bargaining, statistical indications and estimates are usually compromised."

mately 100 per cent, the investment has been recouped in 16⅔ years.

There are occasions on which a separate appraisal of intangibles is made in the general manner described. That is, earnings above those calculated on the value of the tangible assets are given a certain estimated period to run and the earnings are then capitalized at some percentage rate. Nevertheless, the estimated period of earnings does not indicate a proper rate of capitalization, nor does the capitalization rate yield the period of earnings. The two are separate determinations.

In addition, the use in an appraisal of a higher capitalization rate for intangibles than the percentage rate of return applied to tangibles may be questioned. Graham and Dodd point out

> that under modern conditions the so-called "intangibles," *e.g.*, good will or even a highly efficient organization, are every whit as real from a dollars-and-cents standpoint as are buildings and machinery. Earnings based on these intangibles may be even less vulnerable to competition than those that require only a cash investment in productive facilities.[3]

From an investment standpoint, an intangible like good will may prove more profitable than tangible assets. Bloomberg, in a study of common stocks, found that on the basis of market yield and increase in value good will stocks (companies in which good will is a prominent factor) have been more advantageous to the investor than the "physical asset stocks."[4]

ASIDE from general discussion, there is no reason to assume that the intangibles of a public utility purchased at a reasonable price lack vitality and there is certainly no implication that earnings are excessive.

[3] Benjamin Graham and David L. Dodd, "Security Analysis."

[4] Lawrence N. Bloomberg, "The Investment Value of Good Will."

Proposed Treatment of Account 100.5

IN 1934, while with the public service commission of Wisconsin, the writer prepared, for consideration of that commission, systems of accounts for electric and gas utilities that provided the original cost procedure in the recording of property acquisitions.[5] In substance, the method was the same as that contained in systems later adopted by the Wisconsin and other commissions, but the accounting disposition of amounts in the acquisition adjustment account was covered in more specific detail.

The acquisition adjustment was divided into two main subaccounts. The first of these was to record the excess, if any, of the cost of acquisition over the value of the property as found by the commission in connection with the acquisition or with the authorization of securities to finance the property. If the commission had made no finding of value, the cost to the accounting company was to be accepted in lieu thereof for accounting purposes, in the absence of conclusive evidence to the contrary. Further provision was made that the excess of purchase price over original cost was to be accounted for subsequently in such manner as the commission might authorize or direct in each case. However, it was proposed that the method should be such that operating expenses were not charged with an amount exceeding the value of the property. If the cost exceeded value, any provision for amortization or any writing off of the excess was to be charged to net income or surplus. The regulatory basis for this plan of disposal was that an amount paid for property in excess of value was a risk of the owners and was not to be recorded as an operating expense. Implicit in the provision was the view that from the standpoint of rates and utility financing, the purchase price was excessive and that the commission would be justified in ordering immediate or future write-off.

THE second subaccount was to record the difference between commission value and original cost to the extent that value did not exceed purchase price. This difference was to be accounted for by cause and the amount due to each was to be recorded separately as:

(1) Going value.
(2) Water-power value.
(3) Changes in construction costs and price levels.
(4) Other, to be specified if possible.

A plan for each component of the excess of commission value over original cost was set forth.

Basically, the amount for going value was to be retained in the adjustment account "until such time as the utility service of the company in the area to which the going value relates is sold or abandoned," but it was provided further that if the commission directed that the going value be written off it should be to net income or surplus. The reason for this proposal was that going value is in the nature of an enterprise cost, that it has an indeterminate life, and that it should be retained in the accounts as long as the company renders service in the area or until there is a permanent loss or de-

[5] The Wisconsin commission was the first to adopt, in a system of accounts effective January 1, 1932, the original cost principle for property acquisitions.

cline in value. Inasmuch as no provision was made for periodic amortization by operating expense charges, when a loss occurred by abandonment or sale of the service, or otherwise, such as by permanent impairment of value, the write down or write-off would be made at the time of retirement, and hence any loss would be charged to net income or surplus. The procedure left open the possibility of periodic amortization of the going value, as of any other portion of legitimate investment, if the facts warranted, and it recognized the permissibility of operating expense charges.

THE amount included in the acquisition adjustment account for water-power value was to be retained therein "until the water-power site to which the water-power value is applicable is sold or abandoned," but it was provided further that if the commission directed that the water-power value be written off it should be to net income or surplus. The basic rule was to retain the water-power value as a record of a portion of the total investment made in hydraulic land and land rights, because the amount in the adjustment account for water powers is as much a portion of the investment in the lands and rights as the original cost segment of the property. The original cost and the additional cost of the water powers are identical costs to the owner. The treatment to be accorded the original cost of the lands must likewise be accorded to the acquisition adjustment segment of the investment. Since hydraulic lands are generally nondepreciable and nonamortizable, the investment, in total, is retained in the accounts until the site is abandoned or sold. If and when this occurs, any loss suffered at the time is chargeable to surplus.

With respect to an amount included in the adjustment account for changes in construction costs and price levels, it was proposed that the amount be detailed according to the utility plant accounts in which the original cost of the physical property was classified. It was then provided that "unless otherwise directed or authorized by the commission, provision shall be made for the amortization of the amount . . . " by periodic charges to an operating revenue deduction account in the same category as depreciation expense, offset by credits to a reserve for amortization in accordance with methods prescribed for depreciation or amortization of other costs of utility plant. Upon retirement of physical property to which this portion of total

❦

¶ "WHEN *an investor purchases for $1,000 a bond bearing 5 per cent interest, the 5 per cent does not fix the term of the bond at 20 years, and it certainly does not mean that the investment value will expire in 20 years, the number of years in which the interest would amount to $1,000. The bond may mature in 5, 10, 20, 30, or 100 years. The 5 per cent is the annual rate of return, and even though $250, $1,000, or $5,000 is received as interest, the repayment of the principal is expected.*"

investment relates, the acquisition adjustment segment was to be recorded in the same manner as the original cost component of the purchase price; namely, by a credit to the plant account and a charge to the reserve account for the loss on depreciable property retired. Since a portion of this element of acquisition adjustments might apply to land, no reserve thereon would ordinarily be provided.

THE fourth component of the excess of commission value over original cost was a "catchall" to cover unforeseen circumstances. It was to be treated in such manner as the commission might authorize or direct in each case. No other course appeared to be feasible.

From the foregoing, it is clear that no fundamental distinction was made between the original cost component of an investment in a going property acquired and the acquisition adjustment component, within the confines of value. The only thing sought, and the only thing embodied in the new systems of accounts, is to report in one account the original cost of property acquired and in another account the difference, if any, between investment and original cost. This is solely a matter of classification of total cost for the purpose of preserving information useful to regulation. It casts no shadow on the validity or soundness of investment and it does not change the nature of the property. Consequently, there is no occasion for one accounting treatment of one segment of the total cost of a certain kind of asset and another treatment of the other segment of the same cost. Some plant is depreciable and the depreciation or amortization should be applicable to the total investment therein, wherever recorded. Other forms of property, such as land, are generally nondepreciable; hence no amortization is provided, except for limited-term interests. Still other property, such as organization costs, indeterminate franchises, and going value, is associated with the enterprise and is retainable in the accounts.

WHILE intangibles of indeterminate duration may properly be retained in the accounts as long as they exist and have value, amortization might not be objectionable, but there should be full disclosure of the process. The writing off or writing down of an asset of continuing value is an unusual accounting procedure which might be misleading to investors and others. However, there is no economic principle or accounting rule which makes amortization mandatory. It should be discretionary with owners and management. Regulatory authority should impose its will, if empowered to do so, only in an appropriate proceeding, such as one involving rates, security issues, or capitalization, in which the utility may be heard on the quality of its investments and the value of its assets. Moreover, if, in the future, purchased intangibles are not to be considered as a basis for earnings, then, in fairness to investors, utilities should be so advised and they should be afforded an opportunity to recover through expense charges any proper and reasonable investment that is to cease to have value for earnings purposes.

Nothing said herein implies that utility investments have always been prudent, especially when judged by

subsequent events. Time has shown that unwise expenditures have been made on construction and on properties acquired, and on tangible property as well as on intangibles. Excessive prices have sometimes been paid and when this has occurred the owners should carry the burden. The public makes no guaranty that a utility will earn an adequate return on its total investment or on any particular portion of it. Risk is still inherent in utility enterprise. But an investment should not be condemned or devitalized solely because it is in intangibles rather than in material goods. All circumstances and results should be examined. When this is done, there can follow a course of action that recognizes the intrinsic rights of all. Equity will then flourish and original cost accounting will endure.

Birds Bite Lineman

A LINEMAN *for the New Jersey Bell Telephone Company faced an unexpected emergency recently while working atop a telephone pole in Newark, New Jersey, when he was attacked by two sparrow hawks who mistook his operations for a threat to their nest in an adjacent tree.*

The birds swooped down on him, fluttered above his head, clawed, pecked, and harassed him until he almost lost his spike-shoe footing. Then the birds swooped down at four school children who were watching from the street. The children fled.

Another spectator ran into his house near by, seized a shotgun, and went to the roof. He was then in closer proximity to the nest and able to bring the maddened pair of birds down. Residents in the area urged the destruction of the nest, 60 feet above the street, before the eggs hatched.

Wire and Wireless Communication

PLANS to establish a national panel to make recommendations to the War Labor Board on cases involving the telephone industry were announced on December 21st. The WLB said that all regional boards had been instructed to forward to the panel all pending cases. Disputed cases which have been set for regional hearings will be conducted as scheduled, but reports of the hearing agents will be sent to Washington.

Theodore W. Kheel, executive director of the board, was said to be preparing a report of the board dealing with questions of the panel's jurisdiction, its structure, and procedure.

Final details were expected to be announced following a scheduled meeting of the board on December 27th. The jurisdiction of the new panel was discussed at an earlier meeting on December 18th among officials of the AT&T, United States Independent Telephone Association, and the National Federation of Telephone Workers. USITA representatives were Harold V. Bozell, Vern E. Chaney, Richard A. Lumpkin, and Clyde S. Bailey. Bell representatives were Assistant Vice President Sanford Cousins of the AT&T, T. Brooke Price, and Walter Gordon Merritt, attorneys. The National Federation of Telephone Workers was represented by its president, J. A. Beirne, and Vice President John J. Moran, as well as its general counsel, Aloysius Philip Kane.

The panel will be composed of two members each representing public, industry, and labor, with alternates and substitutes for each. Substitutions may be made in the labor representatives in those cases which may arise involving AFL, CIO, or other union organizations not affiliated with the National Federation of Telephone Workers. It was not immediately determined whether the panel's work would include cases involving independent manufacturing companies or Bell manufacturing subsidiaries, including Western Electric and Bell Laboratories.

MACHINERY to handle disputes in the telephone industry was created on December 30th by the National War Labor Board with the appointment of Pearce Davis and Henry J. Meyer as chairman and vice chairman of the panel. Both represent the public. Two industry and two labor members would be named later.

Mr. Davis has been assistant director of the wage stabilization division. He was assistant professor of economics at Hunter College and head instructor in the department of economics at Harvard University.

Mr. Meyer served as executive assistant to the board and later became chief of the national case review section.

* * * *

THE special House committee which for two years has conducted a stormy investigation of the Federal Communications Commission wound up its study of the much-criticized agency on January 3rd, with submission to the

House of a clean bill of health for the commission signed by the 3-man Democratic majority and a bitter indictment—or two of them—signed by the 2-man Republican minority.

The commission emerged unscathed in the 25,000-word majority report, and its recent chairman—James Lawrence Fly, the focus of much bitter controversy—won not only an "acquittal" but credit for leaving the commission "better than he found it." The majority report was signed by the committee chairman, Representative Clarence F. Lea of California, and Representatives Edward J. Hart of New Jersey and J. Percy Priest of Tennessee. The minority dissents were written by Representatives Louis E. Miller of Missouri and Richard B. Wigglesworth of Massachusetts.

* * * *

A War Labor Board panel recommended last month that the Chesapeake & Potomac Telephone Company eliminate all borrowed employees by February 15, 1945, in accord with a union agreement.

The panel also suggested that hereafter no operator borrowed for emergency purposes from other cities should be reimbursed for living expenses for more than four months. It was this issue, the payment of living expenses to out-of-town operators, which threatened recently to precipitate a nation-wide walkout of telephone operators.

The panel recommended that the operators' starting rate be increased $4, that the top rates be lifted $3, and the maximum be reached in eight years, instead of the present ten.

The company had offered a $5 starting increase and a $2 increase in the top rate of $33 and a reduction in the progression schedule to eight years.

* * * *

Paul A. Porter, who was director of publicity for the Democratic National Committee during the recent campaign, was appointed chairman of the Federal Communications Commission by President Roosevelt on December 21st.

The President had sent Mr. Porter's nomination to the Senate several weeks ago, but because of Mr. Porter's absence from the city on business, hearings were not held by the Senate Interstate Commerce Committee, and the nomination was not taken to the floor for confirmation.

The recent appointment was an interim one, and Mr. Porter took his oath of office soon after it was announced.

Stephen T. Early, presidential secretary, said the interim appointment had been made to enable Mr. Porter to gain experience in his new post between that time and the convening of the new Congress this month, when the President will again send his name to the Senate.

* * * *

Michigan Bell Telephone Company officials recently defended their long-standing contract for American Telephone and Telegraph Company services, which were estimated to cost $1,004,956 for the year 1944.

Thomas N. Lacy, vice president and general manager for the company, declared that the license contract agreement with AT&T has existed since 1904 and is "to the advantage" of the Michigan Company. He declared that the AT&T makes its patents and inventions available to Michigan Bell and also helps it to raise capital. Lacy said:

> The American Company in a very real sense, therefore, is a central organization which does things for the Michigan Bell and other Bell system companies more efficiently and more economically than they could do for themselves individually. The fact that the work of such a central organization is of common benefit to all companies in the Bell system should not be a penalizing factor in state regulation.
>
> If it were not for the license contract, the Michigan Bell would have to perform similar services for itself if it were to maintain the same standards of service, and it would have to pay more for such services.

Michigan Bell officials came to Lansing as the Michigan Public Service Commission reopened its show-cause hearing on why Bell rates should not be reduced to avoid Federal excess profits taxes. Michigan Bell had estimated that

its Federal liability for 1944 would be $4,402,000.

* * * *

FOLLOWING close upon the strike vote taken by 6,000 long-distance telephone operators in New York city, the general executive committee of the Traffic Employees Association of the New York Telephone Company, representing local operators involved in a wage dispute with the company for nearly a year and now pending before the War Labor Board, voted on December 21st to take a strike vote among its 12,000 members in the metropolitan area. The committee announced that any strike action would be guided by the 30-day cooling off period provided for under the Smith-Connally Act.

Similar strike votes have been taken in Philadelphia and St. Louis.

The vote was taken early this month and resulted in a 9,600-to-250 decision in favor of a strike. It was indicated by the Traffic Employees, however, that they would delay action until they could strike simultaneously with the long-distance operators.

The Traffic Employees Association, which has no connection with the Federation of Long Line Telephone Workers, with which the 6,000 long-distance telephone operators are affiliated, embraces local telephone operators, clerical and other employees of the New York Telephone Company in the five boroughs of the city and in Nassau, Suffolk, Rockland, and Westchester counties.

The United States Conciliation Service on December 29th took in hand the wage dispute between New York's long-distance operators and the AT&T. H. R. Colwell, regional director of the service in New York, appointed Conciliation Commissioner James W. Fitzpatrick to arrange a conference with labor and management representatives.

* * * *

STORIES from France are evidence that the Nazis did not interfere with every prewar activity of the French people, and one thing they did not stop was television research. Result, France now has television comparable to the pictures we see on movie screens. And no other country has anything like it.

Charles Collingwood, CBS reporter, cabled this information to his bosses at Columbia studios in New York recently. Ed Murrow, London representative for CBS, predicted just such an announcement on November 5th when he said "French television experts, under the very noses of German occupation authorities, have perfected a system which will transmit clear, sharper, and larger pictures than any transmitted in America or Britain before the war."

And that is not all. French engineers are reported ready for their new 1,000-line television, the type we speak of, with receiving sets and cameras. A French television scientist, claims that the whole world will change over to the French 1,000-line system of visible broadcasts.

* * * *

THERE is interest in Congress in Federal aid in extending telephone lines to rural sections where service is not now obtainable. This is in response to farmer desire for the convenience even in remote sections.

While the discussion is going on, there comes a simultaneous announcement in Alabama by the Alabama Power Company and the Southern Bell Telephone Company that looks to wide extension of telephone service without the necessity of Federal aid.

The announcement, however, does not envision two lines of wire, one for telephones and one for electric current for lighting and heating and power. Modern technical developments make possible telephone conversation over electrical lines carrying power. With only one line needed for both telephone service and electrical service, the cost of providing the farmer with both conveniences will be cut.

Hence it is possible for private enterprise to provide service to scattered communities where the cost heretofore has been prohibitive.

Financial News and Comment

By OWEN ELY

Middle West Corporation

(Series of holding company reviews.)

MIDDLE WEST CORPORATION is a $463,000,000 holding company, incorporated in 1935 to take over the assets of Middle West Utilities Company. This reorganization accounts for the simple capital structure of the holding company—3,307,301 shares of common stock ($5 par). However, as the SEC did not participate in the reorganization, a considerable amount of system revamping has remained to be done to effect system compliance with § 11 of the Utility Act.

While, as the name suggests, the company's properties are in a broad belt in the middle section of the country, they extend over 13 states and 2 Canadian provinces. Obviously a number of subsidiaries will have to be disposed of to meet geographical requirements. Also there are important problems with respect to the recapitalization of subholding companies, particularly as to the degree of subordination of the Middle West's interests as compared with public holdings.

In the calendar year 1943 Middle West took down in cash less than one-quarter of the consolidated system net income, about half of this being received in preferred dividends, and a little less than half in common dividends, with a small amount in interest and miscellaneous income. Obviously, there is considerable income "blockage" because of preferred dividend arrears in the subholding companies, or for other reasons.

	State	*Estimated Population Served (Thousands)*
Central & South West Utilities Co.	....	....
Central Power & Light Co.	Tex.	515
Public Service Co. of Oklahoma	Okla.	500
Southwestern Gas & Electric Co.	Ark., La., Miss., Tex.	302
American Public Service Co.	....	...
West Texas Utilities Co.	Tex.	260
Kentucky Utilities Co.	Ky.-Tenn.	405
Dixie Power & Light Co.	Tenn.	2
South Fulton Light & Power Co.	Tenn.	2
Old Dominion Power Co.	Va.	30
Michigan Gas & Electric Co.	Mich.	110
Middle West Utilities Co. of Canada, Ltd.	Canada	...
Great Lakes Power Co.	Ontario	3
North West Utilities Co.	....	...
Lake Superior District Power	Mich.-Wis.	67
Northwestern Public Service Co.	Neb.-S. D.	122
Wisconsin Power & Light Co.	Wis.	282
South Beloit Water, Gas & Electric Co.	Ill.	5
Oklahoma Power & Water	Okla.	34
*Central Illinois Public Service Co.	Ill.	498
		3,137

*Not consolidated; Middle West owns about 75 per cent interest.

Based on population served, about two-thirds of the Middle West system is controlled by the two subholding companies, Central & South West utilities and North West Utilities. These companies are still overcapitalized, and simplification of their capital structure, together with a determination of Middle West's true equity, is the major system problem.

Central & South West also has a subholding company, American Public Service, and here also there are substantial arrears on the 7 per cent preferred stock, though these have been reduced somewhat by extra payments. (In 1944, $12.25 was paid; $10.50 in 1943—leaving arrears of $31.50.) Accordingly, there is a double problem here, though American Public Service controls only about one-sixth of the Central & South West Utilities system.

OTHER complicating factors in the system setup are (1) the ownership by Middle West of substantial amounts of preferred stocks in the subholding companies, and substantial minority interest in some common stocks. Thus, Middle West owns 47 per cent of Central & South West Utilities' $7 prior lien preferred, 100 per cent of the $6 issue, 57 per cent of the $7 preferred, and 61 per cent of the common. Middle West owns 48 per cent of American Public Service preferred although Central & South West owns practically all the common. In the case of North West Utilities, Middle West owns 60 per cent of the 7 per cent prior lien stock, 36 per cent of the 7 per cent preferred, and all the $6 preferred and common. There is a minority interest in Michigan Gas & Electric. (Middle West owns all the preferred, but only 72 per cent of the common.)

Some system complications are being ironed out with the current reorganization of Inland Power & Light. This was formerly controlled by Commonwealth Light & Power, a subholding company of Middle West, but both companies have been in bankruptcy, and their dissolution is currently under way. The plan for liquidation of these companies was approved by the SEC October 25th, and by Federal Judge Sullivan November 17th. A hearing was set for December 29th for consideration of confirmation of the plan. Under the plan, public holders of Inland Power & Light collateral bonds will receive an initial distribution of $667.50 per bond, together with other funds to become available later; debenture holders receive $300 cash. Commonwealth Light & Power bonds also obtained $300 cash. Middle West Corporation receives for all its claims $260,786 cash, shares of Arkansas-Missouri Power Corporation and Missouri Edison Company with an assigned value of $600,000, and a 26 per cent share of the net balance resulting from sale of Kansas Power, etc. The total equity of Middle West will not be very substantial. The pending reorganization of Midland United and Midland Utilities (two bankrupt Insull holding companies) may also yield some small assets to Middle West.

THE straightening out of the big holding company, Central & South West Utilities, has proceeded slowly. In June, 1942, the SEC denied a plan submitted in 1940, but another year was required to confirm this in the courts. In August, 1943, a new plan was filed which provided for a merger of Central & South West and its subholding company, American Public Service. The new company would have only one issue of common stock (3,655,951 shares of $10 par each). Of this amount, 50,000 would be sold to Middle West at $10 each to improve working capital, and the remainder would be distributed to the preferred and common stockholders of the two companies. However, progress with this plan had been delayed by the question of geographical integration, since the SEC has not yet ruled as to whether the South West system can be retained as a single integrated system.

Recently, Middle West announced that a substantial amount of its miscellaneous holdings would be sold in 1945 for an estimated $13,500,000 (equivalent to about $4 a share on the stock). These in-

cluded Arkansas-Missouri Power, Commonwealth Light & Power, Inland Power & Light, Michigan Gas & Electric, Middle West Utilities Company of Canada, United Public Service, Wisconsin Power & Light, and stock to be received through reorganization of Midland United. The holdings of Central & South West, obtained when that company is recapitalized, will also be disposed of.

Plans have not yet been definitely formulated for liquidation of the smaller subholding company, North West Utilities. However, that company was reported a few weeks ago to have considered the possibility of selling its holdings in Northwestern Public Service and Lake Superior District Power for cash, reinvesting the proceeds in Wisconsin Power & Light; the common stock of the latter company then to be distributed to its prior lien and preferred stockholders, according to their respective rights. Later, however, it was reported that the Wisconsin stock might be sold.

EVIDENTLY, a substantial part of the Middle West system must be liquidated, either because of geographic requirements or capital simplification of subholding companies. The company recently paid a capital distribution of $2 to shareholders (in addition to a regular 30-cent dividend). The company estimates dividend income for 1945 at $2,169,028 which, with proceeds from sale of stocks in other companies, would bring cash resources to $18,430,000 at the end of 1945 (after allowing for payment of 50 cents a share on the common stock). Thus the common stock (currently quoted at 11, ex the $2.30 payments) would as of December 31, 1945, have an estimated cash value of about $5.58 a share. It would still retain important equities in reorganized Central & South West, Kentucky Utilities, and Central Illinois Public Service, etc.

"Beating the Gun"?

LONG ISLAND LIGHTING COMPANY, when advised of the approval of its reorganization plan by the public service commission of New York, immediately arranged for filing of an amendment to its certificate of incorporation, and the delisting of its old securities on the New York Curb Exchange with substitution of the new $4.20 and $3.60 preferred stocks and the new common. Some weeks previously a committee representing certain holders of the preferred stock had asked the SEC to revoke the company's exemption from the provisions of the Public Utility Holding Company Act (granted in March, 1936). The petition held that the company was now involved in interstate commerce (presumably because it is furnishing power to some airplane manufacturing companies, as it does not transmit any electricity over state lines). The committee considered the plan filed with the New York Public Service Commission as unfair, preferring that a one-stock basis should be substituted.

It seems unfortunate for stockholders that the company decided to by-pass the SEC by immediately consummating its plan. The commission promptly asked the Federal courts for a stay, and, while the district court denied an injunction, an appeal to the U. S. Circuit Court of Appeals was quickly obtained. Judge Hand, in granting another temporary stay of the plan, said that this provided the only possible protection for proceedings instituted by the preferred stockholders and the SEC.

After only one day's trading in the new securities, the Curb suspended trading in these (as well as the old). It is also understood that the transfer books have been closed indefinitely pending outcome of litigation instituted by the SEC. While there has perhaps been some attempt to create an over-counter market, this is obviously rather impracticable and stockholders are thus penalized for an indefinite length of time because the company is caught in a tangle of regulatory jurisdiction. It would have been better to await clearance of the SEC difficulty before listing the new securities—a "when-issued" market could have been created instead. While the claim that

the company is engaged in interstate commerce seems a little tenuous, obviously this must now be settled by the courts, and the SEC may claim jurisdiction on other grounds.

OTHER recent cases where utility companies decided to proceed quickly with recapitalization plans, rather than wait for a final clearance of litigation, worked out more satisfactorily. United Gas Corporation proceeded immediately with the sale of $100,000,000 bonds on November 20th despite the fact that Samuel Okin had combated the plan in three courts and that the usual 90-day appeal period had not elapsed. As Mr. Okin has apparently lost his case, no legal difficulties have thus far arisen as a result of expediting the recapitalization.

In the case of United Corporation, the plan to accept tenders of approximately 45 per cent of preferred stock in exchange for 1.8 shares of Philadelphia Electric and $6 cash (for each share of preferred) was put into effect about December 4th although the petition of Randolph Phillips for an order enjoining the proposal was not finally denied in the court of appeals until around the 18th. Since the company had not actually arranged to exchange the stock, however, and was merely accepting tenders, this fact might have avoided legal complications in the event that Mr. Phillips had been sustained. Whether or not the company ascertained that Mr. Phillips would make no further appeal, is not indicated in press reports.

In view of the many long delays encountered by utility holding company plans in the SEC, it is interesting to note that in some cases at least the companies are anxious to make all possible speed after receiving SEC approval. In the Long Island Lighting Case, however, the company's security holders have been unfairly penalized because the company did not defer to the commission. In the event of extended further delay, the commission might well ask the company to permit over-counter trading in the old securities.

Ebasco Enters Financing Service Field

EBASCO SERVICES, INC., service subsidiary of Electric Bond and Share Company, has entered a new field—aiding any company (utility or other) which wishes to do financing. The company offers to take care of all the problems involved, such as preparation of data for the registration statement and prospectus, including maps, tables, and exhibits; arranging contacts and conferences with prospective buyers, supplying office space for conferences, and collecting comments from interested persons for revision of registration papers; supervising the time schedule and the filing of statements with the SEC; preparing competitive bidding papers and "blue sky" applications; handling the printing, engraving, signing, and delivery of new securities and helping to obtain their listing on an exchange; and, finally, the follow-up job of preparing the annual reports (such as 10-K) required by the SEC in later years. The company's literature states:

> Financing and refinancing operations are of a character not usual in the day-to-day operations of a company's business. They might occur only once in ten, fifteen, or twenty-five years and, consequently, the staff of a company is generally not fully prepared or intimately informed as to the many rules and regulations of the SEC and the procedure to be followed in the preparation of the numerous papers and documents necessary . . . to meet present-day requirements.
>
> Ebasco Services, Inc., is in a position to supply trained personnel, thoroughly familiar with all of the aspects incident to this type of a transaction and is competent, in collaboration with counsel, to guide, supplement, and implement the existing staff of a company, in the event financing or refinancing operations are to be undertaken.
>
> We believe that our company is uniquely qualified to render this particular type of service to industrial and utility companies considering the fact that, since the enactment of the Securities Act of 1933, we have supplied such services to utility companies that have issued and sold securities in an aggregate amount of over $700,000,000.

It was further stated that all of the services described were under the direction of the officers of the client company and their counsel.

FINANCIAL NEWS AND COMMENT

INTERIM EARNINGS REPORTS

	End of Period	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	Oct.	$2.32	$2.30	D1	..	..	..
American Power & Lt. (pfd.) *Consol.*	Oct.	7.72	9.04	D14	..	..	..
American Water Works *Consol.*	Sept.	.54	.59	D8	$.12	$.11	9
Parent Co.	Sept.	.13	.16	D19	.04	.05	D20
Columbia G. & E. *Consol.*	Sept.	.41	.44	D7	D.03	D.01	..
Com. & Southern (pfd.) *Consol.*	Oct.	7.83	9.07	D13	..	..	..
Elec. Bond & Share (pfd.) *Parent Co.*	Sept.	4.51	4.46	1	1.04	1.04	..
Elec. Pr. & Lt. (1st pfd.) *Consol.*	Aug.	7.07	11.50	D39	..	..	..
Eng. Pub. Service *Consol.*	Oct.	2.32	1.63	43	..	..	..
Parent Co.	Oct.	.66	.56	18	..	..	..
Federal Lt. & Trac. *Consol.*	Sept.	1.55	1.78	D13	.33	.40	D18
Parent Co.	Dec.	1.70	1.43	19	..	..	..
Middle West Corp. *Consol.*	Sept.	.94(c)	.98(c)	D4	.35	.40	D13
Nat. Pr. & Lt. *Consol.*	Sept.	.71	1.09	D35	.18	.18	..
Niagara Hudson Pr. (pfd.) *Consol.*	Sept.	13.40	15.82	D15	3.15	3.52	D10
North American Co. *Consol.*	Sept.	1.83	1.75	5	.40	.43	D7
Parent Co.	Sept.	1.47	1.20	22	..	..	..
Public Ser. Corp. of N. J. *Consol.*	Sept.	.88	.82	7	..	..	..
Std. Gas & Elec. (pr. pfd.) *Consol.*	Sept.	12.33	12.74	D3	.36	.72	D50
United Gas Improvement *Parent Co.*	Sept.	.40	...	..	.09	..	..
Consol.	Sept.	.57	...	..	.14	..	..
United Lt. & Rys. *Consol.*	Sept.	1.45(b)	1.69	D15	..	..	..
Electric-gas Operating Companies							
Boston Edison	Sept.	2.13	2.24	D5	.37	.35	6
Central Illinois E. & G.	Sept.	1.84	...	..	..	..	..
Commonwealth Edison *Consol.*	Sept.	1.79	1.73	4	.41	.40	2
Conn. Lt. & Power	Nov.	2.67	2.60	3	..	..	..
Cons. Edison N. Y. *Consol.*	Sept.	1.84	1.91	D4	D.01	.07	..
Parent Co.	Sept.	1.64	1.94	D15	.13	.10	30
Cons. Gas of Balto. *Consol.*	Sept.	4.64	4.10	13	.85	.78	9
Delaware Power & Light *Consol.*	Oct.	1.10	...	..	..	..	..
Derby Gas & Electric	Dec.	2.36	2.56	D8	..	..	..
Detroit Edison *Consol.*	Nov.	1.15	1.34	D14	..	..	..
Houston Lighting & Power	Nov.	4.94	5.60	D12	..	..	..
Idaho Power	Sept.	2.57(d)	2.19(d)	17	.69(d)	.60(d)	15
Indianapolis P. & L. *Consol.*	Sept.	1.98	1.94	2	.34	.33	3
Pacific Gas & Elec. *Consol.*	Sept.	2.33	2.26	3	..	..	..
Philadelphia Electric	Sept.	1.43	1.46	D2	..	..	..
Public Service of Indiana	Oct.	1.93	1.97	D2	..	..	..
San Diego Gas & Elec.	Aug.	.91	.95	D4	..	..	..
Southern California Edison *Consol.*	Sept.	1.51	1.54	D2	.55	.50	10
Gas Companies							
Amer. Lt. & Trac. *Consol.*	Sept.	1.22	...	..	..	..	..
Brooklyn Union Gas	Sept.	2.38	2.23	7	.34	.30	13
Consolidated Natural Gas	Sept.	3.00	...	..	.14	.33	D57
El Paso Natural Gas *Consol.*	Oct.	3.62	3.55	2	..	..	..
Lone Star Gas *Consol.*	Sept.	.84	.74	13	D.18	D.16	..
Oklahoma Natural Gas	Sept.	3.10	3.22	D4	..	..	..
Pacific Lighting *Consol.*	Sept.	3.45	3.14	10	..	..	..
Peoples Gas Lt. & Coke *Consol.*	Sept.	4.56	6.31	D28	.68	.98	D30
Southern Natural Gas *Consol.*	Sept.	1.86	1.86	..	..	..	..
United Gas Corp. *Consol.*	Aug.	.76(a)	...	..	..	..	..
Washington Gas Light	Oct.	1.89	2.33	D19	..	..	..

D—Deficit or decrease. (a) Estimated *pro forma* earnings on new common stock (before sinking fund). (b) Assuming dissolution plan of United Light & Power is consummated (appealed to Supreme Court). (c) Nine months ended September 30th. (d) After amortization of plant acquisition adjustments.

What Others Think

The Expanding Market for Natural Gas—and Its Problems

LAST June at the Denver meeting, the Interstate Oil Compact Commission directed its regulatory practices committee to make a study of the expanding market for natural gas, of its increased transmission beyond areas in which it is produced, and the advisability of setting up proper and regular standards concerning the functional uses of the product. Since that time this committee has made a preliminary investigation of some of these factors and at the recent winter quarterly meeting of the Interstate Oil Compact Commission at Jackson, Mississippi, submitted an outline report sketching clearly the impact of the war and technological changes in general on the operations of the natural gas business.

For the year 1943 the committee found that states now included in the interstate oil compact (producing 80 per cent of total reported gas marketed) sold natural gas along the following lines:

Field consumption	20.8%
Domestic use	14.6%
Commercial use	5.8%
Carbon black manufacture	8.7%
Petroleum refineries	7.4%
Electric plants	8.3%
Cement industry	1.4%
Other industrial	33.0%

In the manufacture of war products, including high-octane gasoline, additional fuel load has been thrown upon the refineries which have furnished among other products iso-octane, tritane, iso-butylene, butadiene, isoprene, acetylene, toluene, comene, and styrene. Chemical compounds, such as the phenols, aldehydes, ketones, cresols, organic acid, resins, plastics, explosives, synthetic rubber, have been made from natural gas, refinery gases, or these gases in combination with petroleum products. It is now estimated that our aviation gasoline contribution to the conduct of the war amounts to in excess of 500,000 barrels daily of 100-plus octane gasoline. Our natural gasoline products have contributed appreciably to this huge amount of aviation fuel, although the bulk of it is supplied from our petroleum.

ON a weight basis it is estimated that the 1944 yield of crude oil in the United States will approximate 240,000,000 tons, and natural gas 100,000,000 tons. Our 1940 production of chemicals included 800,000 tons produced from coal tar, and 1,800,000 tons from petroleum or other noncoal tar materials. The petroleum tonnage consumed by the chemical industry in 1940 would represent but seven-tenths of one per cent of our 1944 crude oil production, or only one-half of one per cent by weight of our total petroleum and natural gas production. Our oil and gas constituents used in 1944 for synthetic rubber manufacture represent but two-tenths of one per cent of our petroleum production. Even with our expanded use for chemical production from petroleum and natural gas, it may be seen that our total production for 1944 will consume less than one per cent by weight of our petroleum and natural gas produced for this year. The committee report stated:

> It may be inferred from this that even the expected expanded use of gas as a raw material for chemical products will not consume, in the immediate future, an appreciable portion of our natural gas production.
>
> It is a known fact that Germany's war has been motivated by fuel made principally from coal and coal gases, by a process readily adapted to the utilization of methane as a raw material. Our oil and gas industry has been concentrating much research effort on perfecting an economic process in this country for utilizing methane for supplying a portion of our motor fuel market.

Pilot plants utilizing methane gas are turning out synthetic motor fuels of desirable characteristics, including the high-octane values, but from the information obtainable it is felt that considerable improvement in the economics of the process must be made before motor fuel from this source will become highly competitive with gasoline from crude oil, as now being produced.

The life of some of our major fields on the present market outlet will extend over a period of years so great that it may overlap into an era where gas ceases to hold its present rank as a super fuel. It is understood that, in connection with our war effort, a great amount of scientific effort has been directed toward the breaking up of the atom itself. Should success be achieved in this field of endeavor, and it is not entirely impossible of attainment, the utilization of gas, as well as other materials, for fuel, will be superseded entirely.

With a rapidly expanding market, better prospective prices, and greater availability of equipment and materials, most of the gas now not being utilized for economic reasons may be collected and saved. The gas-producing states are now looking forward, under more advantageous marketing and price conditions, to the complete conservation of this natural resource, now so beneficial to the American way of life.

THIS picture is pretty rosy, but the present-day, matter-of-fact picture of natural gas marketing is far more complicated. No one knows this better than the Federal Power Commission, which last year first denied and later authorized an expansion of pipe-line facilities from natural gas fields in Louisiana to connect with eastern marketing areas via Memphis over opposition of producing states which want to keep their supply at home.

The Federal Power Commission has followed up this troublesome decision with an announcement of an exhaustive investigation into the state of the nation's reserves of natural gas, its utilization, competition, and so forth, with a view to recommending further legislation and formulating an over-all conservation policy. Congressional aid to this inquiry was promised in the Overton resolution carrying a special fund of $100,000, which failed of enactment in the eleventh-hour log jam of the dying session of the now defunct 78th Congress. But such congressional assistance may be forthcoming early in 1945. In any event, the FPC is obviously caught right in the middle between demands on one side by gas-producing states that the export of their reserves be curtailed and restricted, and by increasing demands on the other side from eastern and middle western industrial areas for supplemental supplies because existing sources of natural gas are becoming inadequate or failing.

The Louisiana Public Service Commission has authorized the filing of an injunction suit in a Federal 3-judge court against the recent FPC order granting permission for the construction of the Memphis pipe line after the FPC denied the Louisiana commission's motion for rehearing in the Memphis pipeline case.

Battling on another front the Memphis Natural Gas Company is seeking an injunction from a Federal 3-judge court in Louisiana to restrain the Louisiana director of highways from canceling highway crossing permits issued in connection with the Memphis pipe-line construction across Louisiana.

IN Texas the railroad commission started its own investigation of the natural gas marketing and conservation problems in an effort to determine whether it should go through with its threatened order to close down certain natural gas production for export out of the state. At its hearings beginning in Austin December 19th some interesting viewpoints were developed. Most forthright in this first of a series of hearings to study the possibility of formulating a better state conservation program, Marshall Newcomb, attorney for Lone Star Gas Company, told the commission that the state has no power to regulate gas utilities operating in interstate commerce under the Federal Constitution.

Noting that Texas had gone on record before the FPC as opposing Federal regulation of the "end use" of natural gas, Newcomb said that if a state discourages its utilization as a fuel "it may

be sure that electricity from the great hydroelectric power projects of the Federal government, as well as other sources of fuel and power, will ultimately and permanently displace natural gas."

MOVING into the field of manufactured as well as natural gas, we find that there is also a prospective battle for markets. The executive board of the American Gas Association has recommended to the operating gas utility industry certain sales policies for their consideration in promoting the sale of gas appliances and gas service. These policies, which are offered as suggestions only, are as follows:

1. That national, regional, and state gas associations should coöperate with all similar national organizations in all allied fields.
2. That gas utilities should perform the task of promoting the sale of new and improved gas appliances to the point of assured customer acceptance.
3. That as customer acceptance materializes, the activities of the gas utility should be continued in such a manner as to maintain continuing acceptance of gas service and to increase the flow of gas appliance sales through normal channels of distribution.
4. That the gas utility should assume responsibility for gas appliance sales training of personnel (utility and dealer alike), utilizing the coöperation of gas appliance manufacturers.
5. That the gas utility should assume responsibility for training dealers in installation and service techniques, utilizing the coöperation of gas appliance manufacturers.
6. That the gas utility should keep dealers informed as to the increased merchandising opportunities offered to them in the gas appliance field, *e.g.*, additional lines, new products, new rates, etc.
7. That the gas utility should inform all concerned with home construction and financing on all matters having to do with gas equipment and gas service.
8. That the gas utility should provide or make available to dealers facilities for financing gas appliance instalment sales as attractive and advantageous as the utility's own.
9. That the gas utility should initiate and promote appliance sales campaigns with coöperating gas appliance dealers.
10. That home service and all other aids maintained by the gas utility should be made available to coöperating gas appliance dealers.
11. That the gas utility should provide full information as to its policies and practices so as to establish a relationship of mutual understanding and confidence with the dealers.

In his recent statement reviewing the accomplishments of the gas industry in the year 1944, J. French Robinson, president of the American Gas Association as well as of the East Ohio Gas Company, pledged the industry to a determined effort to improve the economics of its operation and to expand certain basic activities so that the benefits of gas service may be realized to the fullest extent possible on a domestic, industrial, and commercial front.

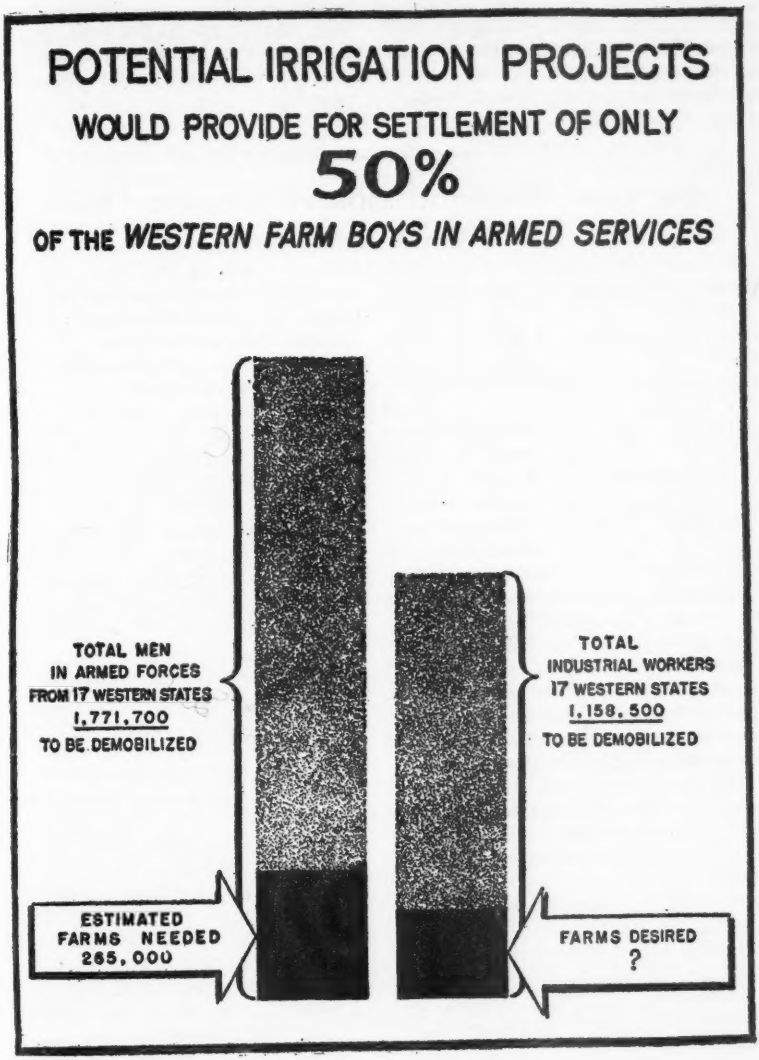
Irrigated Farms for Returning Service Men

IN a recent issue of *Liberty* magazine, Secretary of the Interior Harold L. Ickes wrote under the title, "Men Needed to Develop America," of proposals for the government to spend $3,000,000,000 during the three years following the war on extensive developments planned by his department.

The Bureau of Reclamation of the Interior Department would reclaim millions of acres of arid land in the 17 western states in which lies one-third of the nation's land area. Along with the irrigation of land would go hydroelectric power development, revenues from both of which, Mr. Ickes stated, would "return a major part of the investment to the Federal Treasury."

On newly irrigated lands alone, the Secretary estimates "that a good living would be possible for at least *85,000 farm families* and *50,000 additional families* could find room for profitable farming on the semiarid lands to be furnished with supplemental water."

The further extensions of the hydroelectric power system of government plants in these regions is expected to at-



tract industries which will give postwar employment to the "throngs of workers who migrated to the West to build ships and airplanes." The Secretary avowed that "hydroelectric power played a large part in attracting these workers, and cheap hydroelectric power can now play a large part in keeping them there."

PRESS reports from the West coast have indicated that some of the workers in war plants there plan to go to farming in that section after the war. And, many of the men who entered the armed forces from the 17 western states came from farms. Some of them probably will want to return to farm life. A

glance at the chart on page 109 prompts the query as to where lies the chief urge on the part of the Interior Department for these proposed developments—is it to provide farms for those who want to go on the land, or is it to put the Federal government further into the business of public hydroelectric power?

—R. S. C.

Statutory Renegotiation of Electric Utility War Contracts

As the time approaches when electric utilities, which have contractual relations with government agencies, may be confronted with renegotiation to determine "excessive profits," special interest attaches to a brochure, written by Ernest R. Abrams, and sponsored by the Council of Electric Operating Companies, Washington, D. C., which contains helpful information on the subject. The booklet is pocket size, 185 pages, and contains a number of interesting and original illustrations, charts, and other data supporting the author's penetrating observations and statistical conclusions.

The author outlines the conditions making electric utilities subject to the act; notes the contribution of these utilities to the war effort; indicates the impact of war on electric utility profits, and how war contracts disturb the peacetime business of these companies. He then emphasizes the far-reaching effect renegotiation can have on electric utilities, a type of business with singular characteristics, and concludes with a summary and a suggested solution of the problem.

Listing the six factors which the Renegotiation Act of 1943 provides shall be taken into consideration in determining the amount of "excessive profits," the following points are brought out in the summary:

1. *Efficiency of the contractor.* Electric utilities during the 4-year war period handled 76 per cent increase in load with only 22 per cent increase in generating capacity; and they satisfied the expanded demand at reduced unit cost, both to themselves and their customers, even though with materially reduced employee staff.

2. *Reasonableness of costs and profits.* The reasonableness of costs demonstrated over the years. During 1943 operating costs were at lowest point in history of the industry, despite the fact that taxes reached an all-time high; book value of utility plant reached its all-time high in 1943, but the percentage return of gross corporate income was at its all-time low. Where the industrial load in 1943 was 107 per cent greater than in 1939, practically three-fifths of that increase is due to war loads of a temporary nature, which will fade with the war itself.

3. *Amount and source of private and public capital employed and net worth.* Privately owned electric utilities are unique as to source of capital used for expansion in war years. Except in a few isolated instances, every dollar required for the creation of new facilities has been provided by the utilities themselves. This is in marked contrast with the hundreds of millions of dollars of public funds that have been poured into such large public power developments as TVA, the Central Valley project, and Bonneville and Grand Coulee dams, to enable them to serve war industries.

4. *Extent of risk assumed.* The risks assumed by privately owned electric utilities were largely of the "one-way" variety. These utilities, in contrast to manufacturers of automobiles, for example (who were wholly uninformed as to the cost to be incurred in the production of tanks or guns—their contracts had to be on a "gentleman's agreement" basis), knew what price

they should charge the War and Navy departments for power. They had been serving large industrial power consumers with heavy power demands for years. And rates to these large consumers had been filed with state regulatory commissions having jurisdiction over them. When the departments asked for a price on a given block of power, the utilities quoted them the same price for power that any other consumer of comparable demand would have to pay. It will be apparent that the departments benefited greatly from the established methods of fixing industrial power rates. Although their demands were of a temporary nature, and substantial investment in expanded facilities and interconnections often were required to serve them, these war agencies enjoyed the same standard rates at which peacetime industries with permanent and stable demands were being served.

5. *Nature and extent of contribution to the war effort.* Privately owned electric utilities have no secret techniques which they use to their own advantage, and to the exclusion of other privately and publicly owned systems. As fast as new developments arise, they are broadcast to the world through the various engineering societies. Moreover, through their entirely voluntary effort the Utilities Wartime Aid Program, conceived by an executive of a privately owned electric utility, placed a vast fund of technical knowledge and experience at the command of the Army and Navy departments. As a result of maintenance of an unfailing supply of electric energy to operate 67½ per cent of factory equipment powered by central stations (which admittedly has never been "too little or too late"), they assured the United States and the United Nations of an unending stream of war matériel. Through expansion of facilities, interconnections with adjoining systems—whether publicly or privately owned—and through power-pooling arrangements, these electric utilities placed the entire generating capacity of the nation at the command of essential industries. In addition, the privately owned electric utilities have made other important contributions to the war effort, such as better lighting for war industries; extension of central station service to farms; salvaging much metal and vital material; steadily reduced unit prices for electricity; and increased their tax payments to the Federal government by more than 226 per cent during the four defense-war years.

6. *Character of business, extent of subcontracting, and rate of turnover.* This factor appears designed primarily for manufacturing enterprises, but is somewhat applicable to privately owned electric utilities. Although not so styled in the electric utility business, these service institutions did, in effect, a substantial amount of "subcontracting" when they made interconnections with adjoining systems so that power could be shoved to any area requiring it. Then, with respect to the turnover of capital, privately owned electric utilities are probably the horrible example of American enterprise. In 1941, these utilities had $6.29 invested in facilities to serve the public for every dollar of annual operating revenues received, compared with an investment of but 64 cents to produce an average annual dollar of gross sales for twelve other types of industry.

One Solution to the Problem

THE author comments that it should now be apparent that the peculiar characteristics of privately owned electric utilities set them apart from all other forms of American enterprise. Their low rate of capital turnover, the large proportion of their operating revenues consumed by capital hire, the heavy burden of taxation they are forced to bear, the control exercised over their rates by public regulatory bodies, and their inability to recoup past losses from future operations place them in a wholly different category of undertakings from

unregulated industrial concerns whose only limitation on prices and profits is that dictated by public resistance.

On the one hand, the rates which privately owned electric utilities charge their customers, be they individual householders or agencies of government, are standard rates filed with and approved by state regulatory commissions. On the other hand, the prices charged by industrial concerns for their products are wholly unregulated and are determined largely by what the traffic will bear. And where electric utility profits are limited to a fair return on the value of property devoted to public service, the profits of industrial enterprises are confined by no similar ceiling. Yet, under the provisions of the Renegotiation Act of 1943, regulated electric utilities and unregulated industrial enterprises are accorded identical treatment in the renegotiation of any profits they may derive from contracts from the departments.

ALTHOUGH no formal demand has been made that privately owned electric utilities file with the War Contracts Price Adjustment Board an allocation of costs between renegotiable and nonrenegotiable business, there has been a strong trend in that direction, as evidenced by utility conferences with the War Department Power Procurement Officer. Yet, the filing of a cost allocation would appear wholly unnecessary for the purposes of determining the fairness of charges to the departments for electric energy consumed. Even if it were administratively feasible to determine whether there had been "excessive profits" derived under these contracts, it would appear that the foregoing data clearly indicate that privately owned electric utilities have made no "excessive profits."

Furthermore, the writer points out, the renegotiation of the contracts which privately owned electric utilities have with the departments is not mandatory upon the War Contracts Price Adjustment Board. Section 403(i)(4) of the Renegotiation Act of 1943 provides that the board: "is authorized, at its discretion, to exempt from some or all of the provisions of this section . . . (b) any contracts or subcontracts under which, in the opinion of the board, the profits can be determined with reasonable certainty when the contract price is established . . . (f) any subcontract or group of subcontracts not otherwise exempt from the provision of this section, if, in the opinion of the board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation. The board may so exempt contracts and subcontracts both individually and by general classes or types."

SPECIAL attention is called to the fact that, acting under the authority granted it in the foregoing portion of the act, the War Contracts Price Adjustment Board, on May 10, 1944, did exercise its discretion with respect to "public utilities — communication" and grant them full exemption from renegotiation of any profits derived under contracts with the departments where the rates charged under these contracts were "published rates or charges, fixed, approved, or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made the rates or charges for service of a comparable character."

Since privately owned electric utilities are as closely regulated as are communication utilities, primarily to insure the reasonableness of their rates and to prevent them from earning more than a fair return on the value of property devoted to public service, it would appear that the War Contracts Price Adjustment Board would be wholly justified in granting them similar exemption. And, conversely, if it does not grant them exemption, is it not laying itself open to charges of discrimination, and of depriving privately owned electric utilities of equal protection under the law?

Particularly is this true when the making of an allocation of costs between re-

"CORPORAL, IT WAS NOT A TELEPHONE EMERGENCY I WAS TALKING ABOUT"

negotiable and nonrenegotiable business is so impractical, and when privately owned electric utilities fit so neatly into the definition present in the act of industries which may be exempted because of lack of administrative feasibility of the renegotiation process. The board would do well to recognize that renegotiation cannot be carried out without a determination of the reasonableness of rates charged all comparable consumers; that it would have to fix a reasonable rate that should have been charged the departments and subcontracts; that it would thereby be assuming to establish and determine the reasonableness of rates to all classes of consumers; that this very action on its part would be a derogation of the authority which sovereign states have vested in their utility regulatory bodies; and that it would mean a further invasion of the rights of sovereign states by the Federal government.

In conclusion, the author expresses the opinion that private electric utility managements should not rely too greatly, however, on the possibility of exemption, nor should they assume that the entire matter of renegotiation of their contracts can be ignored. The Federal Power Commission, which is designated by the act as the adviser to the War Contracts Price Adjustment Board where electric utility renegotiation is involved, can be expected to present voluminous evidence in the case of each privately owned electric utility having contracts and subcontracts during 1943 with the departments. Accordingly, unless each privately owned

electric utility presents to the board testimony of a positive character as to the reasonableness of its charges and of its failure to earn any "excessive profits" under them, the board in its judicial capacity will have no choice but to decide each case on the evidence before it.

—R. S. C.

Union Maneuvering in the Communications Field

THE recent announcement by the National War Labor Board of a special national panel for disputes arising in the telephone industry comes as a climax to a series of maneuvers in the communications field generally with respect to collective bargaining rights, wage claims, and so forth. The new telephone panel is being formed as a result of conferences among WLB representatives, Bell and independent company representatives, and representatives of the National Federation of Telephone Workers—the largest single bargaining organization in the telephone field.

This is the first time, however, that a special panel has been set up to handle all cases arising out of a single public utility industry (other than the railroads, which have their own established mediation machinery). It is also noteworthy that the special panel recognizes the dominant position of a union organization which is not affiliated with either the AFL or the CIO.

The panel would be composed of two members each, representing public, management, and labor, with the usual alternates and substitutes. In cases which may arise affecting AFL, CIO, or other unions not affiliated with the National Federation of Telephone Workers, substitute labor representatives will be named.

IN the allied telegraph field, however, AFL and CIO unions have had a pitched battle, principally as the result of the merger of Western Union with the former Postal Telegraph organization. The AFL Brotherhood of Electrical Workers predominated in the Western Union organization, while the CIO American Communications Association had largely organized the former Postal Telegraph.

Upon the merger becoming effective, however, the National Labor Relations Board decided to throw open the entire employee organization of the combined Western Union properties to decide between the CIO or AFL affiliate. Specifically, the bargaining election was ordered held by the NLRB for 60,000 Western Union employees between January 2nd and January 10th.

This action brought a scorching criticism against CIO Chairman Harry A. Millis and John M. Houston, NLRB member, from the president of the American Federation of Labor, William Green, charging alleged favoritism to the CIO. Specifically, Mr. Green criticized both Chairman Millis and Mr. Houston for voting to set up seven division election units instead of the nation-wide unit demanded by the AFL, which claims to represent a majority of employees in six out of seven areas. In other words, the AFL felt that with such a predominant representation the industry ought to be organized on an industry-wide as well as nation-wide basis, and was apparently confident that it could easily swing a vastly preponderant majority of employee votes on that basis.

It regarded the NLRB decision to cut up the election into seven divisions as a studied attempt to lock off a water-tight compartment within the industry where the CIO union could gain a "beachhead" and grow to make possible trouble for AFL unions in other divisions in the future. This state of affairs, AFL leaders believe, is not conducive to industrial peace but, on the contrary, is an incentive to promote pirating of members, organization raids, and campaigns, which could

keep the employees of the combined Western Union properties in a constant state of turmoil.

Mr. Green had told Chairman Millis that "because of your manifest bias in favor of the CIO and your hostile attitude to the AFL, I regard you as totally unfit to serve as a member of the NLRB." He further told Millis that he would feel "tremendously relieved when your membership on the NLRB is finally terminated." Millis' term expires next August, but it was learned that he will be available for reappointment if the President desires to do so.

THE CIO came right back with a demand that another NLRB member, Gerard Reilly, who dissented from the majority opinion in the Western Union Case, should resign because he is allegedly prejudiced against CIO.

Replying to Green's charge that he and Mr. Houston had reversed their position in the Postal Telegraph election of 1938, Mr. Millis pointed out that neither he nor Mr. Houston were members of the NLRB at that time. Mr. Millis reminded Mr. Green that in that election the NLRB set up the four northwestern states as a separate union because the Brotherhood of Electrical Workers, an AFL affiliate, was the bargaining representative. He said this same philosophy was followed in the Western Union decision.

Mr. Millis said that "employees should have an opportunity to select or reject either the AFL or the American Communications Association (CIO) in the metropolitan division (New York city) where the ACA has been the recognized representative of more than 5,000 Western Union employees as well as all the Postal employees in that locality."

"Were your position adopted," Mr. Millis wrote Mr. Green, "these employees would be denied the opportunity of determining by the democratic process of a secret ballot whether they shall retain the representative which they now have or select a new one."

Notes on Recent Publications

APPLICATION OF RADIO CHANNELS IN THE TELEPHONE FIELD. By B. C. Burden. Address delivered at the forty-ninth annual convention of the United States Independent Telephone Associaiton. Chicago, Ill. October 10, 1944.

APPLICATION OF THE PUBLIC WATER SUPPLY INDUSTRY FOR RADIO CHANNEL ALLOCATIONS. *Journal of the American Water Works Association.* December, 1944.

GIANT TEST TUBE FOR OL' MAN RIVER. By Edgar A. Poe. *The New York Times Magazine.* December 17, 1944.

HAS PRIVATE ENTERPRISE A FUTURE? By John V. Van Sickle. *Trusts and Estates.* May, 1944.

INDUSTRY COÖPERATION VITAL IN RENDERING BEST SERVICE. By Walter S. Gifford. Address delivered at the forty-ninth annual convention of the United States Independent Telephone Association. Chicago, Ill. October 10, 1944.

IS NATURAL GAS TOMORROW'S FUEL? By Benjamin C. Adams, Jr., and Frank H. Dotterweich. *Industry and Power.* November, 1944.

MIXED POLICY FOR POWER FIRMS IN ENGLAND. By Walter Hill. *Journal of Electrical Workers;* reprinted in *Public Power.* November, 1944.

PUBLIC RURAL ELECTRIFICATION. By Frederick William Muller. American Council on Public Affairs, Washington, D. C. 1944. Pp. viii, 183. Paper edition, $2.50; cloth edition, $3.

RADIO'S ONE HUNDRED MEN OF SCIENCE. By Orrin Elmer Dunlap, Jr. Harper's, New York, N. Y. 1944. Pp. 314. $3.50.

RATE REDUCTIONS *v.* EXCESS PROFITS TAXES. By C. E. Packman. *American Gas Association Monthly.* November, 1944.

THE VALLEY AND ITS PEOPLE: A Portrait of TVA. By R. L. Duffus and Charles Krutch. Alfred A. Knopf, New York, N. Y. 167 pp. $2.75.

WHOLE WORLD EYES GIANT U. S. RIVER PROJECT. By Mary Spargo. *The Washington Post.* October 8, 1944.

The March of Events

TVA Reports to Congress

PAYMENTS made by the Tennessee Valley Authority to state and local taxing bodies in lieu of taxes, from which this Federal agency is exempt, represent "a reasonable cost of the power program" and should be continued, the TVA said in a report to Congress on December 26th.

The report was requested by Congress at the time the TVA Act was amended in 1940 to establish such payments on a broader basis than originally provided.

Under the program, the report said, payments are now being made to 6 states and 126 counties and in the year 1944 they were greater than the ad valorem taxes on all property bought by the agency, including land allocated for purposes other than power production.

These payments, according to the report, have increased from $1,499,417 in 1941 to $2,168,824 in the last year. Schools generally receive the largest share of the payments to counties, followed in order by payments going to general purposes, debt service, and roads.

The payments are graduated downward from 10 per cent of gross power proceeds of the preceding year, which were paid in 1941, to the 5 per cent minimum payable in 1949 and annually thereafter. The 45 per cent increase in money payments from the first year of the present program reflects gains in the TVA's power revenues more than offsetting the decreases in the percentage rate of payments.

The report added that the TVA's payments were not the only money received by local governments as a result of the agency's operations. The total tax equivalents and taxes set aside by the 83 municipal and 45 coöperative systems which distributed TVA power in the fiscal year 1943, added $1,957,614 to the incomes of the benefiting communities, or something above $400,000 more than the former ad valorem property taxes on properties acquired from private interests by these public and coöperative distributing systems.

Approves Flood Control Bill

THE bill providing for postwar flood-control projects of an estimated value of $1,000,000,000 has been signed by President Roosevelt with the understanding that nothing in it would jeopardize the creation of the proposed Missouri Valley Authority.

President Roosevelt said in a statement that the establishment of a Missouri Valley Authority should receive "the early consideration" of the next Congress. However, no construction will begin until six months after the war or until Congress authorizes appropriations for the work.

Mr. Roosevelt said that until the end of the war he did not intend to submit estimates of appropriations or approve allocations of funds for any project "that does not have an important and direct value to the winning of the war."

The bill authorizes a $400,000,000 multiple-purpose project in the Missouri river basin.

"I have signed, on December 22, 1944," President Roosevelt said in a statement, "the Flood Control Bill, HR 4485. It appears to me that, in general, this legislation is a step forward in the development of our national water resources and power policies.

"The plan of calling upon states affected by proposed projects for their views is a desirable one, but, of course, the establishment of such a procedure should not be interpreted by anyone as an abrogation by the Federal government of any part of its powers over navigable waters. Authorization of the projects listed in the bill will augment the backlog of public works available for prompt initiation, if necessary, in the postwar period."

The act secures for all states their rights to "review" all future flood-control and reclamation projects surveyed by Army Engineers and the Bureau of Reclamation. It gives to western states priority rights on water for irrigation, mining, domestic, and industrial uses.

FPC Approves Purchase

THE Federal Power Commission last month approved the California Oregon Power Company's purchase of the California Public Service Company's electric facilities in Lake county, Oregon, and Modoc county, California, for $470,000 in cash. The facilities to be acquired serve six small communities, including Lakeview, Oregon, and Alturas, California. A joint application for the authorization under § 203 of the Federal Power Act was filed by the two companies on October 28, 1944.

The order stated that the proposed merger of facilities would tend to improve service. In its application, COPCO stated it intends to establish rates on a basis comparable to those now in effect on other portions of its system

as soon as practicable. There are no intercorporate relationships between California Public, a wholly owned subsidiary of Peoples Light & Power Company, and COPCO, controlled by Standard Gas & Electric Company. However COPCO's system is adjacent to and connected with the Lakeview and Alturas properties and furnishes the greater part of their electric energy requirements.

New Setup Filed with SEC

AN over-all plan for corporate simplification and physical integration under the terms of the Public Utility Holding Company Act was filed last month with the Securities and Exchange Commission by the Columbia Gas & Electric Corporation, one of the last major utility holding companies to be affected by the "death sentence" provisions of the act.

That the plan will meet opposition, however, was disclosed in a statement in the plan that United Corporation, Columbia's largest common stockholder, is not in favor of the approach to the problem of recapitulation taken by the Columbia management. United owns 2,410,856 common shares, or 19.6 per cent of the voting stock, of Columbia Gas.

Under the terms of the plan, Columbia proposes to recast its present outstanding preferred, preference, and common stocks into a single class of new common stock for distribution to present shareholders. The distribution would give 63.55 per cent of the new stock to present preferred and preference stockholders, and 36.45 per cent to present common stockholders.

In addition Columbia proposes to separate its Cincinnati and Dayton groups of properties from the system and distribute stock in the Cincinnati Gas & Electric Company and the Dayton Power & Light Company among the holders of all present Columbia stocks. The Cincinnati and Dayton companies, according to the plan, "constitute the only combined gas and electric operations in the Columbia system, and since neither of them engages in the production or the long-distance transmission of natural gas, both are capable of segregation without disruption of the production or flow of gas through the interconnected system."

The plan also contemplates a substantial reduction in the amount of indebtedness now outstanding against Columbia Gas. It is proposed to reduce the debenture indebtedness from $76,835,000 to approximately $60,000,000 by the retirement of certain publicly held debentures and the refunding of those which remain. Details of the refunding, however, were not included in the plan.

SEC Disapproves Bond Sale

THE Securities and Exchange Commission last month disapproved the sale by Capital Transit Company of an issue of $12,500,000 first and refunding mortgage bonds, series A, 4 per cent, due December 1, 1964, to an underwriting group of 24 firms on their bid of 97½. This was the only bid submitted when the company offered the bonds for sale at competitive bidding on December 18th. The underwriters had planned to reoffer the bonds to the public later in the month at 100, subject to SEC clearance of the sale.

In its order the commission said: "After careful consideration of the record, we are not satisfied that competitive conditions were maintained or that the price to the company and the underwriters' spread are proper. Therefore, we cannot release the jurisdiction which has been reserved or approve the price and spread."

This was said to be the first time the commission has failed to approve the sale of an issue of securities at competitive bidding since it inaugurated its competitive bidding rule for sale of securities by public utility companies nearly four years ago.

Capital Transit is a subsidiary of Washington (D. C.) Railway & Electric Company, which is, in turn, a subsidiary of North American Company.

Director Appointed

JOHN A. FERGUSON, for the past nine years a member of the Missouri Public Service Commission, has accepted appointment as executive director of the Independent Natural Gas Association of America, it was announced last month by E. Buddrus of Chicago, president of the association.

The appointment became effective January 1st, and as soon thereafter as possible, Ferguson would open offices for the association in Washington, D. C., Mr. Buddrus revealed.

Ferguson is a graduate of Indiana University with a degree in law. He served twenty-two months overseas during World War I. Subsequent to the war, he became United States commissioner for the eastern district of Missouri. Later, he was with the finance department of the state of Missouri, and for six years he served as general manager of the Mathews-Pebblefield Land Development Company. He became a member of the Missouri Public Service Commission in 1935 and had served with the commission since that time. He has achieved national recognition in his work with the Missouri regulatory body and in his activities with the NARUC.

British Electricity Plan

A 3-YEAR program to boost Britain's post-war electric output 33 per cent—the first step of a long-term plan to give electric power to every farm and village in England and Wales—was recently reported under way in a London dispatch.

The initial phase, an increase of 3,000,000 kilowatts, would carry through to the winter of 1948, at an estimated cost of $360,000,000.

Expansion would begin to meet growing industrial demands as factories swing back to peacetime production, and to power gadgets that British housewives have dreamed about for years.

There is a widespread myth that every home in the United States, no matter how poor, has electrically powered washing machines, refrigerators, mangles, dish washers, mixers, toasters, and sweepers. And the British housewife, getting her picture of American home life from the movies—she calls them "flicks"—hopes that there will be something like it in Britain.

Power producers say they want cheap electricity for every possible user, including Great Britain's farms. One of the country's big jobs, interrupted by war, was electrification of main rail lines. That program is expected to be resumed quickly after hostilities cease, providing mass employment for demobilized men and making new demands on the country's grid.

Ontario Backs Utility Purchase

THE Ontario government announced last month it had approved purchase by the Hydro-Electric Power Commission of Ontario of the Northern Ontario Power Company, Ltd., for $12,500,000. The company serves communities in northwestern Ontario as well as mining camps in Porcupine, South Porcupine, Cobalt, and Kirkland lake districts. It owns 8 hydroelectric power plants, 739 miles of transmission lines, 157 miles of distribution lines, and 421 miles of telephone lines.

Alabama

Light Rates Reduced

THE state public service commission last month announced a reduction in Alabama Power Company's rates in Choctaw county which, it was estimated, would save approximately 350 customers more than $8,800 a year.

The commission's order said that beginning in March, 1945, rates in Butler, Riderwood, Lisman, Toxey, Gilberton, and surrounding communities in the county would be put on a par with other Alabama power users throughout the state.

The order pointed out that the territory is now served by a small Diesel oil generating plant at rates higher than those of customers elsewhere in the power company's system. A new 110,000-volt transmission line from Cuba, in Sumter county, to a point near the Butler-Toxey highway in Choctaw county has been approved by the War Production Board, the commission said, and is expected to be completed in March.

The line will connect the Riderwood district with the remainder of the company's statewide hydro and steam plant system.

Arkansas

Rate Reduction Upheld

THE Arkansas Power & Light Company lost the first round in its fight to prevent the state utilities commission's ordered reduction in power rates last month when Third Division Circuit Judge G. W. Hendricks upheld the commission's decision and dismissed the company's petition.

Gordon E. Young, Pine Bluff lawyer representing the power company, said the decision will be appealed to the Arkansas Supreme Court. The company had asked that the state commission's June 24th order which found electric rates "unjust, unreasonable, and excessive" and ordered reduction in rates totaling $975,000 be vacated.

The commission had fixed $47,996,290 as a rate base for a 6 per cent return on investment after meeting operating expenses. The company argued the allowance should not be less than $52,000,000, due to increased price levels and present value of property.

Judge Hendricks pointed to the Securities and Exchange Commission's report that the company was able to refund $30,000,000 of its bonds at decreased interest rate after the commission issued its order. He said this proved the soundness of the commission's decision.

Building Permit Granted

THE state utilities commission last month gave the Arkansas Power & Light Company a permit to build a 110,000-volt transmission line from Pine Bluff to Helena at a cost of $884,200 and a 66,000-volt line from Slovak to Hazen to cost $29,000.

The 118-mile Pine Bluff-Helena line will serve Stuttgart, Clarendon, Brinkley, and Marianna and Helena. It will replace a 66,000-volt line which stopped at Brinkley and a separate power plant at Helena described as "old and inadequate."

The 10-mile Slovak-Hazen line will serve about 550 rice wells.

Vice President C. S. Lynch said the company had received priorities from the War Production Board and planned to start construction immediately.

California

Refuses to Transmit Power

THE Pacific Gas and Electric Company eliminated a second solution to San Francisco's power problem last month by refusing to transmit Hetch Hetchy energy to Mare Island and Hunters Point Navy yards.

In reply to a letter from Utilities Manager E. G. Cahill, James B. Black, president, said: "We do not believe we should be asked to transmit power other than our own, if such power is to be sold to the public or to customers that we are able to supply."

Black said the company was willing to transmit city power to San Francisco to meet municipal requirements and would do so at a cost of $758,595 a year, exclusive of charges for street-light services other than power.

Sale of the power to the Navy yards had been suggested by Secretary of Interior Harold L. Ickes as a means of complying with the Raker Act, which forbids sale of power generated from Yosemite National Park waters to a private utility for resale. The city is currently selling the power to Pacific Gas and Electric Company.

On December 11th Ickes turned down the first choice of the city among three plans submitted to him, that the city sell the entire Hetch Hetchy output to the Modesto and Turlock irrigation districts.

The developments left one plan open to the city: to use Hetch Hetchy power for its municipal needs, sell Modesto and Turlock what they can actually use, and waste the rest of Hetch Hetchy's capacity. Modesto and Turlock officials believe they can eventually use as much power as the city can spare, by attracting industries which require large quantities of cheap power. But Ickes has rejected as subterfuge any plan to sell power to the districts until the companies are actually there and ready to use it.

Mayor Lapham expected to submit to Secretary Ickes "a specific plan complying with the Raker Act by the first of the year."

Georgia

Gets Month's Light Free

GEORGIANS received notice on December 24th that they would not have to pay their December light bills. The state public service commission ordered the Georgia Power Company to reduce its 1944 revenues by refunding more than $850,000 to residential customers and almost $50,000 to street-lighting customers.

The commission decided the gross revenue of the company should be reduced. The company was said to be making the refund by canceling the December bill.

Illinois

Vote on Transit Plan Set

AN ordinance authorizing the city of Chicago to purchase and operate the Chicago Surface Lines, the Chicago Rapid Transit Company (elevated lines), and possibly the Chicago Motor Coach Company, was ordered prepared last month by the city council committee on transportation.

"We must get down to actual work on the transportation muddle, which can be cleared up only by municipal ownership," said Alderman Quinn, chairman of the committee.

The proposed ordinance will be submitted to the voters in a referendum to synchronize with the special judicial elections to be held in some wards on June 4th, Quinn said.

Joseph Grossman, assistant corporation counsel, and William H. Sexton, special assistant corporation counsel and traction expert, were instructed to prepare the ordinance. Traction officials will have until February 1st to accept a plan for unifying all transportation services under private ownership.

Grossman advised the committee to permit the unification plan to lapse February 1st, then enact the municipal ownership ordinance, subject to approval in the referendum.

Indiana

Utility Files Suit

THE Citizens Gas & Coke Utility, a subsidiary corporation of the city of Indianapolis, filed suit in Federal court last month to recover $27,508 from the American Credit Indemnity Corporation of New York.

The suit arose from a contract made prior to

the city's acquisition of the utility company whereby the Dumhoff & Joyce Company, Cincinnati, was appointed sole sales agent for all coke produced by the utility.

It was alleged that the Dumhoff & Joyce Company, whose contract as sales agent expired in 1939, failed to pay $47,508 due the city-owned utility and that the American Credit Indemnity Corporation, under terms of a credit policy in which the first $20,000 of any loss was deductible, now is liable for $27,508, as set forth in the complaint.

The Citizens Gas & Coke Utility further set forth in its complaint that it obtained a judgment against the Dumhoff & Joyce Company in the courts of Ohio but that the execution of this judgment was returned by the sheriff of Hamilton county, Ohio, as unsatisfied. Negotiations for settlement have been pending since that time.

Louisiana

Fights State Road Ban

A HEARING on an application of the Memphis Natural Gas Company for preliminary and final injunctions restraining the state highway department from canceling highway crossing permits issued in connection with the construction of a new north Louisiana pipe line between the Lisbon field and Monroe was scheduled to be held before a 3-judge Federal court on January 12th.

Federal District Judge Wayne G. Borah ordered D. Y. Smith, director of highways, to appear on that day and show cause why a preliminary injunction should not be issued, court records showed recently. Judge Borah also called upon Circuit Judge Elmo P. Lee and District Judge Adrian J. Caillouet to sit with him at the hearing.

In addition to the restraining order which would nullify, according to the petition, an order of the highway department issued August 30th, attempting to cancel the highway crossing permits, the petition sought a declaratory judgment against the action of Smith in attempting to cancel the permits.

The petition asked that the court declare the action of the highway director unwarranted and unauthorized by the laws of the state and in violation of the due process and commerce clauses of the 14th Amendment to the Constitution of the United States. It also asked that in the event that it is held that the defendant is vested with such authority by state law, a judgment be rendered on the grounds that the state statutes are in violation of the 14th Amendment because they authorize the withholding or cancellation of permits because of the use of the pipe line in interstate commerce.

Maine

SEC Approves Transit Sale

CENTRAL MAINE POWER COMPANY'S proposal to terminate the lease under which it operates the transportation system owned by its subsidiary, the Portland Railroad Company, sell the transportation system, and dissolve Portland, was approved recently by the Securities and Exchange Commission. Central Maine, a part of the New England Public Service Company system, has accepted the bid of H. E. Salzberg, Inc., of $1,275,000 for the transportation system. The Salzberg firm operates bus lines in Lewiston and Auburn.

The program includes the purchase by Central Maine, for $134,364, of certain real estate, electrical equipment, and power lines now owned by Portland, the call and redemption of the 3½ per cent bonds, due 1951, and the payment, as of the maturity date November 1, 1945, of the 5 per cent bonds of Portland outstanding in the hands of persons other than Central Maine, and the distribution to stockholders, other than Central Maine, of an amount equal to $110 per share. Central Maine will pay to Portland a sum which, together with monies belonging to Portland, will be sufficient for this purpose.

Michigan

Intervention Denied

A PETITION filed by a group of industrialists for the right to intervene in the city of Jackson's suit to enforce an ordinance reducing gas rates of the Consumers Power Company was rejected last month by Circuit Judge George W. DesJardins, who ruled that the city has no jurisdiction over the utility company's rates.

Judge DesJardins, of Lapeer, advised the petitioners that they could appeal his ruling to the state supreme court or request a review of the case.

Missouri

Rebates Light Bills

SOME 4,200 customers of the Kirkwood municipal light department, who received their December bills just before Christmas, found "Season's Greetings" stamped in red across the statement and this notice in the corner:

"The earnings of the light department again this year enable the city to render free service to its customers for one month. Your account is therefore credited with the amount due."

The total amount credited to the customers was about $21,000. A similar sum was marked off the books last year when the city council voted a rebate for the first time.

The city buys power from Union Electric Company and distributes it over its own lines, and the rebate was made possible by savings resulting from wartime restrictions on improvements and extensions.

Montana

Commission Issues Findings

THE state public service commission last month issued its findings and opinion with respect to accounting adjustments to be made by the Montana Power Company, a subsidiary of American Power & Light Company, for the purpose of reducing property accounts to the basis of original cost. The commission ordered the company to segregate $28,641,606 and directed this amount to be written off immediately against earned surplus and capital surplus. The commission stated that the amount remaining in earned surplus after these adjustments are made should be adequate to protect the interests of preferred stockholders.

The commission ordered that $7,264,680 be set aside in another account as acquisition adjustments. Included in this figure were $4,748,086 costs of hydraulic land rights and $2,384,465 costs of intangibles. Both items are to be retained on the books so long as the property continues in service. Only $131,128 of acquisition adjustments was directed to be amortized. This amount would be applied against earnings over a 10-year period, and represents intangibles resulting from acquisition of property no longer in use. (See also page 125.)

Nebraska

Purchase Deal Advanced

THE Securities and Exchange Commission on December 26th granted the American Power & Light Company's request for an order declaring its sale of the Nebraska Power Company's common stock to be a step in compliance with provisions of the Holding Company Act. The request was said to be made to realize tax savings.

American Power has agreed to sell 975,992 shares of Nebraska's common stock and an option covering an additional 29,008 shares to Guy C. Myers of New York for $14,175,000 plus $3,000 a day from October 5th to the closing date, between February 15th and April 15th. Mr. Myers will assign the stock to the Central West Irrigation Company, a nonprofit corporation, which is obligated to change its name to the Omaha Electric Committee, Inc. Incorporators of the committee will hold the Nebraska Power Company's properties in Omaha until the Peoples Power Commission or the city of Omaha is in a position to purchase them. Meanwhile, the Loup River Public Power District has a firm commitment to take all the properties, subject to the rights of the Peoples Power Commission and the city of Omaha to acquire the Omaha properties subsequently.

Also on December 26th, the Nebraska Power Company filed a district court suit seeking to prevent the Omaha city council from forcing it to reduce power rates $965,000 a year, and District Judge James T. English signed a temporary restraining order preventing the council ordinance, passed December 21st, from becoming effective January 5th as scheduled.

Judge English set January 15th for a hearing on a temporary injunction.

New York

Labor Opposes Merger

A MOTION asking the denial of Consolidated Edison Company of New York's application to merge five affiliated companies into the parent utility was entered before the state public service commission last month by John J. Corrigan, attorney for the Brotherhood of

Consolidated Edison Employees, Locals 3 and 6. The motion, made at the close of hearings on the company's application, was denied by Chairman Milo R. Maltbie. Mr. Corrigan declared in his motion that the merger would create "an unwieldly, powerful monopolistic group not readily amenable to regulation," and asserted that the real reason for the proposal was "a financial crisis" in the parent company, which, he said, was obligated to refinance $125,000,000 of outstanding obligations within six years.

Oklahoma

Rate Set for Smaller Co-ops

AN annual reduction of $23,787 in the preferential electric rate of Oklahoma Gas & Electric Company for rural electric coöperatives serving rural subscribers and small communities was ordered by the state corporation commission majority last month.

It was a sort of middle-of-the-road order by the commission in the deep-seated controversy between the Oklahoma Gas & Electric Company and the rural electric coöperatives over extensions of the limited rate.

The coöperatives want the preferential rates on electricity bought from the Oklahoma Gas & Electric Company, regardless of the size of the town served, and the OG&E wants to confine it to small communities. The threat from the rural electric co-ops is the establishment of their own plants by government subsidy.

The order followed hotly contested arguments made before the state commission last July and it was interpreted as a forerunner in the struggle between private ownership to sell the current to the coöperatives and public ownership.

Reford Bond, chairman, and Ray O. Weems issued the order with William J. Armstrong, minority member, voting against it.

Bond said the order, effective December 15th, would mean an annual savings of $23,787, or 29.37 per cent reduction in costs, to the rural electrics served by the OG&E.

The order provided the preferential rate of 8 mills a kilowatt hour be reduced to about 6 mills, with limitation for the rate to farm users and communities of less than 125 customers, which Bond estimated would mean communities of population of less than 600 persons. It also provided the limited rate for nonfarm users up to 30 kilovolt amperes of transformer capacity. Bond said the object was to confine the preferential rate to farm users and small communities.

Pennsylvania

Gas Rates Boosted

THE nearly 200,000 customers of the Equitable Gas Company in the Pittsburgh area are faced with rate increases beginning February 10th. The increases will bring the Equitable rates into line with those of the other two large operating companies in the area, the Peoples Natural Gas Company and Manufacturers Light & Heat Company.

Relatively small, the increases will amount to 20 cents for consumption of 1,000 cubic feet of gas, and range up to 80 cents for consumers using 5,000 and 10,000 cubic feet. Beyond that point they will taper off.

The move to boost rates was revealed on December 26th by D. P. Hartson, vice president and general manager of Equitable Gas Company, who said Equitable had filed a new supplement to its tariffs with the state public utility commission.

The new rates are: a minimum charge of $1 for the first 700 cubic feet of gas or less; 65 cents per thousand cubic feet for 4,300 cubic feet; 60 cents a thousand for 5,000 cubic feet; and 45 cents a thousand over 10,000 feet.

Equitable furnishes gas for consumption to 177,885 residential customers and 14,392 commercial customers. The company serves the territory north of the Allegheny river and the Ohio river from Bellevue to Tarentum, including West View and the North Hills territory. It also serves the south side of the Monongahela and Ohio rivers from McKees Rocks to McKeesport and also certain sections of Dormont and Mt. Lebanon.

In announcing its new supplement to its tariffs, the company pointed out that for several years its earnings have been far below the allowable return fixed by the state superior court in its decision of November 10, 1943, in connection with the rates of the Peoples Natural Gas Company.

City Solicitor Anne X. Alpern announced that she was asking the city council "to request the other municipalities served by Equitable to join with the city against the Equitable rates." She predicted the increases would cost Pittsburgh consumers about $1,400,000 a year.

The Office of Price Administration has petitioned the state commission to suspend the proposed increase.

City's Lighting Condemned

PITTSBURGH'S economy-minded budget committee turned its attention last month to the Duquesne Light Company's annual bill as Councilman Thomas J. Gallagher charged that "antiquated and expensive" methods of street lighting were costing the city thousands of dollars annually.

Mr. Gallagher said that about $75,000 a year could be saved throughout the city by adopting the recommendations of A. R. Brunwasser, utility consultant for the city, for a new lighting system.

A 25-page analysis prepared by Mr. Brunwasser, charging the light company with "discriminatory" tactics against the city, was submitted to council by Mr. Gallagher. Mr. Brunwasser stated that "manufacturers stopped making arc lights about 1920 because of their inefficiency in not throwing enough light toward the ground, and due to the fact that the more efficient and cheaper incandescent light was developed."

He said Duquesne Light Company operates more than 500 of these "obsolete and ruinously expensive arc lights in downtown Pittsburgh and East Liberty, which were installed before 1928. The company claims that at the present time it is impossible to substitute incandescent lights because of war conditions. . . . I think the city deserves a reduction of at least $10,000 a year because of the failure to make the substitution."

Mr. Gallagher also said the company had refused to sign a new contract drawn up by the city law department, by which the light company would be compelled to adopt economy methods, now or after the war.

Citation for Gas Company

THE Harrisburg Gas Company has won the National Security Award and Pennant in recognition of "extraordinary achievement in establishing and maintaining security protection measures against enemy air raids, fires, sabotage, and avoidable accidents."

The presentation, made upon the recommendation of the Dauphin county and Pennsylvania councils of defense, was approved by the United States Office of Civilian Defense.

The award certificate was presented by Colonel Wilfred A. Morgan, commanding officer, Harrisburg subdistrict, Third Service Command, and was accepted by Richard L. James, assistant manager of the operating department of the company.

Only 54 of the 17,000 gas companies in the state have been similarly honored.

Trolley Strike Ends

BUS and trolley operators restored transit service recently in Reading, a war production center of 120,000, and in near-by Lebanon after a 4-day work stoppage.

The regional War Labor Board, which recently declined to grant them a wage increase, had issued a back-to-work directive.

The 220 workers, members of the Amalgamated Association of Street Electric Railway and Motor Coach Employees, stopped work on December 12th without explanation.

Tennessee

To Purchase Gas Plant

CITY council granted City Manager George R. Dempster authority to negotiate purchase of the Knoxville Gas Company for "$450,000 or less" on December 26th over the arguments of a citizen who appeared before the body to protest the unwisdom of the purchase.

James M. Webb, resident and mining and oil man for forty years, labeled the Knoxville Gas Company an "irresponsible organization with more libalities than assets," telling the city council it would be "a losing investment."

"Knoxville is an electric town," Webb declared. With Tennessee Valley Authority electricity successfully supplying this city with power, there will not be a large enough demand for gas to make the business profitable to the city, he asserted.

It was subsequently reported arrangements for purchase of the company had been completed, except for minor details, and the city would begin municipal operation of the gas system January 1st. Operation will be by the city utilities board.

Texas

Begins Natural Gas Study

THE sale or transportation of natural gas in interstate commerce cannot be directly regulated or taxed by the state of Texas, the state railroad commission was told last month at a hearing to study regulation and utilization of the resource.

The commission met with producers of natural gas in the first of a series of hearings to study a conservation program. Texas has recently become the southern terminus of an in-

terstate pipe line to West Virginia. Other hearings were scheduled to be held.

Marshall Newcomb, general attorney for the Lone Star Gas Company, told the commission that the state has no power to regulate natural gas utilities in interstate commerce.

Newcomb explained that his company has little direct concern with export of natural gas in the conduct of its business, and that it imports more than it exports. He noted, however, that the company has always been vitally interested in conservation of natural gas and that its interest in the informal hearing was primarily to make available facts and arguments "as may permit an intelligent and fair handling of the subject."

The orders set forth that the investigation is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act. The inquiry will determine whether the Chicago Corporation is a natural gas company within the meaning of the Natural Gas Act, and whether all rates charged and collected by the Tennessee Gas & Transmission Company and the Chicago Corporation within the jurisdiction of the commission are proper and not discriminatory.

Simultaneously, the FPC set for hearing on January 29th in Washington an application filed by Tennessee Gas & Transmission for authority to build and operate about 65 miles of additional pipe lines in Texas.

Virginia

Approves Transit Transfer

NORFOLK'S city council last month voted approval of the transfer of the bus and streetcar systems of the Virginia Electric & Power Company to the Virginia Transit Company, scheduled to become effective December 29th.

However, the ordinance approving the transfer specifically provides that the change of ownership does not relieve the power company of any of its original agreements and obligations to the city. Councilman Rives Worsham, speaking for the council, said the vote was given with the understanding that the city later will approach the new company for new operating agreements, franchises, and other details not included in the transfer agreement.

Washington

To Conduct Continuous Poll

SEATTLE citizens soon will find themselves taking part in an experiment in local government—a poll to measure citizens' opinions on broad civic problems.

It will be established and operated by the University of Washington psychology department, and specially trained students will ring the doorbells and ask the questions throughout the city, according to the American Municipal Association.

Some of the questions that might be asked when the polling machinery gets into operation are:

What type of postwar projects should Seattle plan? Should we spend money for a new city hall? What about revising the city charter?

Are the citizens satisfied with the present service they are getting from Seattle's city government? From the King county government?

Seattle city council members were reported pleased with the prospect of having in operation a reliable method of finding out how the public feels on many municipal problems.

West Virginia

Utility Purchase Approved

THE Federal Power Commission recently approved the acquisition of all the electric facilities of the West Virginia Light, Heat & Power Company, Sistersville, West Virginia, by the Monongahela West Penn Public Service Company of Fairmont, West Virginia. According to the application filed under § 203 of the Federal Power Act by the Monongahela Company on November 24, 1944, the cash price of $427,633 is based upon the original cost of the properties involved, less depreciation as shown on the West Virginia Company's books.

Monongahela proposes, the order stated, to substitute its rates for those now in effect with the result that charges to consumers would be reduced about 10 per cent or some $21,000 a year. Located in Tyler, Wetzel, and Marshall counties, West Virginia, the facilities serve some 2,200 customers.

The facilities proposed to be acquired are now interconnected with the Monongahela Company's system and that company is now supplying the greater portion of West Virginia Light's energy requirements.

The Latest Utility Rulings

Property Values Not to Be Destroyed by Accounting Requirements

THE Montana commission, in a reclassification of accounts of the Montana Power Company, explained its view that in transactions where the consideration is other than cash the cost shall be based upon "commercial value," and this value may be determined in any number of ways. Quoting from the opinion:

> First, this commission may determine whether a transaction is such that it will create a cost. Thereafter, this commission must take into consideration all of the elements involved in that transaction to determine the cost thereby created. This determination may be made from a finding of a board of directors of a corporation, from engineering valuations, from various and sundry studies and experience appraisal tables, earnings, and all other information which may be available. This commission does not feel that it should bind itself to any particular theory of determining cost or value.

All value of any property, utility or otherwise, said the commission, is based partly upon certain intangibles. There is going concern value and good will in any operating utility. An engineer may consciously or unconsciously take this into consideration. The commission said that it would consider intangibles and would amortize them in Account 100.5 or permit them to remain in the plant account, as it saw fit, in accordance with the surrounding circumstances in any particular case, depending upon what its best judgment should dictate.

The system of accounts (similar to the system of the Federal Power Commission) contemplates, according to the Montana commission, and is based on the theory, that a transaction between affiliates should be recognized to the extent that it is based on the fair commercial value of the property at the time. Such a transaction should be closely scrutinized, but if it meets all of the tests which can be applied for fairness and sound commercial value, it should then be recognized.

Referring to the attitude of the Federal Power Commission staff, which, in the words of the commission, "took the position of criticizing every possible transaction," the commission declared:

> The Federal Power Commission staff, in reaching its conclusions, disregarded state laws; and their brief argues that the Federal Power Act supersedes state law. We do not believe that this Federal agency has the right to disregard state laws. We find no conflict between the Federal Power Act and the state laws involved in this case and believe that the decisions of the Federal courts require the recognition of state laws, of corporations created by state laws, and transactions carried out under state laws. In fact, all transactions are carried out under state law. We consider this a fundamental question of states' rights, and we cannot agree with a Federal agency which refuses to recognize a transaction carried out under state law.

The commission found that there had been legally effective consolidations under state law. The commission refused to disregard such a transaction as a mere continuation of an earlier company. A new cost, the commission held, can be created upon consolidation.

The commission referred to rulings and decisions of the Internal Revenue Bureau, which "jumps upon any transaction which may create profit." Profit, said the commission, is the result of a transaction which creates a cost. The commission continued:

> It recognizes every transaction which is recognized by the states in regard to corporations. This is just contrary to the posi-

tion of the staff of the Federal Power Commission. Accountants, lawyers, and their clients will soon be in a position of having to keep several sets of books in accordance with the regulation of any number of Federal bureaus under whose jurisdiction they may be. We feel all of this can be avoided by following sound accounting and attempting to determine the sound commercial value of the property involved.

Consideration was given to current market quotations (in the early years), worth of stock equal at least to par value, dividend restrictions on certain kinds of stock, minutes of directors' meetings fixing value (in the absence of fraud), and other evidence to find the value of a consideration other than cash. Once the public is allowed to invest in a public utility, said the commission, a great deal of caution should be exercised before the valuation placed upon the property of the company is reduced.

Discussing the "period of opportunity" in the early days of Montana when pioneers took risks and developed properties, the commission said that it did not believe people are subject to criticism for taking advantage of opportunities provided the transactions are fair and are based on commercial value. Moreover, it was said, transactions between affiliates cannot be eliminated by any rule of thumb. A cost can be created in a transaction between affiliates if that transaction is based on sound commercial value. The commission recognized also that intangibles do have value and should not be given the summary treatment of automatic amortization. *Re Montana Power Co. (Docket No. 3421).*

Property Transfer to Foreign Coöperative Corporation Disapproved

THE California commission held that it may not authorize the transfer of public utility properties to a foreign corporation not presently lawfully transacting, within the state, a public utility business of like character. The commission accordingly denied an application by the Public Utilities California Corporation to transfer to Coos Electric Coöperative, Inc., an Oregon corporation, authority to effect the transfer of electric and water utility systems in California.

A purchaser of property devoted to a public use, said the commission, takes such property subject to all of its public utility obligations, even though the purchaser be an entity not subject to regulation under the Public Utilities Act. A private corporation is not exempt from regulation as a public utility merely because such corporation may have been organized on a coöperative basis, the commission held. The commission continued:

> The articles of the Oregon corporation indicate that one of the purposes of the corporation is to furnish electricity and water "to its members," and such articles provide that the corporation "shall render no service to or for the public." However, the powers and purposes which may be set forth in articles of incorporation do not of themselves fix the future status of a corporation as being utility or nonutility in character. Even in cases where the issue is whether there has been a dedication to public use, the test of status is to be found in acts and performance, rather than in statements contained in articles of incorporation or in bylaws.

Re Public Utilities California Corp. (Decision No. 37389, Application No. 25928).

Federal Action Excludes State Commission Jurisdiction over Railroad Securities

THE Missouri commission dismissed for lack of jurisdiction an application of Missouri-Kansas-Texas Railroad Company for an order authorizing it to issue certain short-term notes in order that it might borrow funds to refund or

repay indebtedness owing to the Reconstruction Finance Corporation. The commission held that the Federal government had exercised its exclusive powers over the interstate railroad so far as to take possession of the field upon the particular subject and had thereby made state regulatory statutes on the same subject inoperative.

The Interstate Commerce Act requires commission approval of the issuance of securities by interstate carriers maturing more than two years after date, while the Missouri statute requires approval by the state commission of securities maturing more than one year after date. It might be contended, said the commission, that Congress had not entered the particular field of securities maturing after one year and not beyond two years after date so as to render inoperative the Missouri statute. In other words, said the commission, should the omission by Congress be deemed to be a "gleaning remaining abandoned in the field" so as to belong to the state under the authority of its statute? The commission thought not. It declared:

> While the law of the field, under the Mosaic Law, was that all gleanings falling in the harvest, and even the forgotten sheaf left in the field, belonged to the poor and distressed who would appropriate them, we think the modern rule on the subject is less rigid.

The Federal statute, it was pointed out, exclusively covers the subject of the issuance of securities of interstate railroads, limits the purposes for which they may be issued, and prescribes which of such securities may and may not be issued without first obtaining an order of the Interstate Commerce Commission. The act confers exclusive and plenary jurisdiction upon the Interstate Commerce Commission on the subject and authorizes issuance of securities and assumption of obligations or liabilities in accordance with the statute without securing approval other than as specified.

The act provides that the carrier issuing notes having the maturity in question shall, within ten days, file with the Interstate Commerce Commission a certificate of notification. The commission concluded:

> Although the act of Congress does not require the previously obtained approval of the Interstate Commerce Commission before such a carrier may issue notes or securities to mature not later than two years after their date, still it exclusively covers the subject matter and lacks no potency to effectually render this Missouri statute inoperative on the same subject, in so far as it relates to this matter before us. Identity of provisions in national and state legislation is not required, herein, in order for the former to render the latter inoperative, since the former obviously exclusively covers the field. If the rule were otherwise, no end of confusion would result, especially if the carrier operates, as does this one, in many states in some of which the national and state legislation might be identical, so as to render the latter inoperative, while in others the provisions in the legislation might not be identical, so as to leave the latter operative or partially so.

Re Missouri-Kansas-Texas Railroad Co. (Case No. 10,587).

Refunding Bonds and Notes Authorized to Improve Financial Position

CAPITAL TRANSIT COMPANY secured approval by the public utilities commission of the District of Columbia of the issuance and sale of $12,500,000 principal amount of first and refunding mortgage bonds, series A, 4 per cent, due December 1, 1964, and the borrowing from certain banks of the sum of $2,500,000 at an interest rate of 2.65 per cent per annum. The loan is to be repaid semiannually in aggregate amounts of $250,000. The proceeds of these securities, together with treasury and other funds, will be used to redeem, purchase, or pay, or to make provision for the payment of outstanding obligations.

As the company proposed to sell the bond issue at competitive bidding, pur-

suant to the provisions of Rule U-50 of the Securities and Exchange Commission, the District commission granted exemption from the competitive bidding requirements of its own Order No. 1465. (See also page 117.)

The funded debt structure of the company is extremely complicated, and, said the commission, the extent of the liens of the various mortgages is subject to doubt. The company will be faced with a heavy schedule of maturities during the next few years unless the proposed financing is consummated. Quoting from the opinion:

> Testimony has been offered to the effect that, in order to meet the substantial amount of debt maturing in 1947, the company would be required to conserve all possible cash by deferring the purchase of new streetcars, by modifying its bus purchase program, and by eliminating dividends on its capital stock. However, according to the record, even these drastic expedients would not place the company in a position to meet its 1951 debt maturities. Therefore, it is proposed that the present unsatisfactory outlook be improved by the creation of a new mortgage constituting a first lien upon all the properties (other than such busses as will remain subject to outstanding purchase money obligations); and by providing for the retirement of debt on a more uniform basis during the ensuing years.

Since the commission is engaged in an examination of the company's original cost records, it did not make a finding as to adjusted plant and property figures, but made an assumption (not to be binding in the future) of a figure of approximately $48,500,000. The debt ratio in relation to plant under various assumptions would not be more than 52.9 per cent. Even this ratio, said the commission, did not appear to be unreasonably high.

Testimony was presented concerning a sinking-fund requirement of $500,000 annually and the relation of this requirement to the prospective needs for capital expenditures necessary to maintain and improve service. The commission said:

> The testimony indicated that, if a more stringent debt retirement program should be imposed, the ability of the company to meet its ordinary equipment replacement needs would be impaired. As this commission is vitally interested, not only in the replacement of equipment as it becomes necessary, but also in the extension of facilities as public necessity may require, it concludes that the proposed annual sinking-fund requirement is adequate for the protection of investors, and that any increase in such requirement might be detrimental to the interests of the public.

The commission concluded that the proposed financing was in the public interest, and the application was granted subject to dividend restrictions and to a requirement with respect to an annual provision for reserve for possible plant adjustments. *Re Capital Transit Co. (PUC No. 3393, GD No. 1434, Formal Case No. 343, Order No. 2852).*

Proof Required As to Operations As Basis For "Grandfather" Rights

ONE who seeks a certificate from the Interstate Commerce Commission under the "grandfather" clause of the Interstate Commerce Act on the basis of operations prior to June 1, 1935, must, according to a Federal court ruling, show the extent of prior operations. A finding that a carrier was engaged in seasonal transportation of agricultural commodities during the summer months and that at other times he was without an appreciable amount of traffic, although he occasionally hauled other commodities, was held not to be a sufficient basis.

An argument that this finding was sufficient to prove bona fide operation as a motor carrier was said to be defective because it overlooked an additional finding that it was impossible to determine what the operations were during the "grandfather" period because the evidence did not show the time, origin, or destination of traffic movements at that time but commingled operations with those of others in such a way as to defy separation. The court noted that the

statute required the commission to specify the services to be rendered and the routes over which the motor carrier is authorized to operate; and, continued the court:

> It has been frequently held that this requirement contemplates that the commission shall preserve substantial parity between future and past operations and obviously the commission cannot carry out this function when the applicant fails to disclose the nature of the operations conducted on the "grandfather" date.

A suggestion that the court should send the case back to the commission for further consideration was disapproved, as there was no showing that the applicant had any other evidence of operations on the effective date than evidence contained in an affidavit which had been submitted at the hearing and found to be inadequate. The grant or denial of a rehearing for the purpose of producing further testimony was said to be a matter resting within the commission. *Service Trucking Co. Inc. of Federalsburg, Md. v. United States et al. 56 F Supp 1003.*

Rate Base and Return in Trucking Industry

THE Washington Department of Public Service, in authorizing an increase in charges for hauling lumber within a city, answered an argument that the "assumed rate base" was too low with the statement:

> It is true that the carriers consider their trucks to be very precious at the present time—and rightly so. But it is also apparent that when new trucks are again available the present equipment will have a relatively low value. It is also argued that not too much weight should be given to "rate base" and "rate of return" as a measure of just, fair, and reasonable rates in the trucking industry where investment is small relative to annual revenues. It is recognized that much more latitude, in terms of percentage, must be allowed in connection with rate of return for the trucking industry (in which annual gross revenues will generally equal about three times the fair investment) and we are allowing that latitude.

Re Charges for Hauling Lumber in City of Tacoma (Cause No. FH-7854).

Hydrant Charge Disapproved and Output Inclusion in Minimum Charge Permitted

THE Wisconsin commission, in authorizing an increase in municipal plant rates for water, found that proposals by the utility were discriminatory and substituted its own rate schedule. Particularly the commission disapproved the hydrant basis for fire protection charges.

The utility had proposed a rate of $80 per hydrant, which would, upon the basis of hydrants presently in use, afford a revenue from fire protection service of $17,440 net per year. This was said to be approximately $6,500 less than the amount which might be charged for fire protection service if that service were to yield to the utility its full return component. There was said to be no objection to the utility's charging less for fire protection service so long as the amount that the utility would thus forego would not be required to be made up from charges for service to other consumers. The commission continued:

> However, we do not consider that rates for fire protection service furnished by a municipally owned utility to the municipality should be prescribed upon the basis of the number of hydrants in the utility's distribution system or plant. The number of those hydrants is not logically nor necessarily proportionate to the cost of such fire protection service. We have accordingly devised a charge for fire protection service in this case which is not only considered to be but which we think will continue to be substantially proportionate to the cost of furnishing fire protection service in Menasha.

Specific rates in the proposed schedule applicable to general service did not appear fair or equitable. The schedule would result in some decrease in charges to small consumers and a very considerable increase in charges to larger consumers. The entire burden of the proposed increase in revenues from general service would be borne by the few large consumers, and at the same time smaller consumers would enjoy a decrease in rates.

It was considered proper for charges to smaller consumers to be decreased and for rates to larger consumers to be increased, but the commission did not consider that either such increases or decreases should be as much as would result if the utility's schedule were placed in effect.

Theoretically, at least, said the commission, minimum charges should not cover the furnishing of any water at all. Practically, however, it is not inequitable to have some amount of water included in or covered by such minimum charges, since in very few, if any, cases are water connections made without a resulting monthly use of at least some small amount of water.

The commission, in permitting the inclusion of some water use in the minimum charge, said:

> We are prompted to permit the practice of allowing minimum monthly charges to cover the furnishing of a certain amount of water because of the difficulty which the utility will doubtless have in making its customers understand why they should pay anything for the mere availability of the service unless they actually receive some quantity of water. We thus permit practicalities to prevail, at least theoretically, over the requirements of a strict application of principles . . .

Re City of Menasha (2-U-1640).

Other Important Rulings

THE Washington Department of Public Service imposed penalties upon a motor carrier operator for violations of statutes and rules and regulations of the department governing motor freight carriers, stating that the provisions of the law and regulations are mandatory and that neither intent nor lack of intent is an element in determining whether a particular carrier has violated their provisions so as to call for imposition of penalties. *Department of Public Service v. McHugh (Order MV No. 41731, Hearing No. 3201).*

The Pennsylvania commission dismissed proceedings instituted against railroad companies and the city of Philadelphia to determine the reasonableness, legality, and other matters affecting the validity of an agreement permitting the city to construct sewers across the right of way, where the companies had not been served with proper notice of the proceedings until the work contemplated had been completed. Commissioner Buchanan dissented, stating that the majority had "elected to relieve the railroads of the burden of our procedural defects and the negligence and carelessness of the city of Philadelphia." *Re Philadelphia, Newtown & New York Railroad Co. et al. (Public Utility Municipal Contract 1000).*

A New York court ordered a municipal water plant to permit a connection with its main by a mill needing a water supply for its sprinkler system, provided that only so much water should be drawn as might be reasonably required to maintain the sprinkler system in efficient operation, although the municipality contended that its water supply was inadequate and it appeared that if village water was furnished for the entire mill purposes, no water might remain for use by the inhabitants generally. *Dexter Sulphite Pulp & Paper Co. v. Shaver et al. 51 NY Supp(2d) 37.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

Titles and Index

TITLES

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Re Wisconsin Southern Gas Company

Opinion No. 118, Docket Nos. G-236, G-536
October 3, 1944

APPLICATION *by gas distributing company for order pursuant to § 7 of the Natural Gas Act directing a pipe-line company to extend facilities, establish physical connection, and sell gas for distribution, and application for certificate of public convenience and necessity to construct gas transmission line; denied.*

Service, 6 — Jurisdiction of Federal Power Commission — Gas extension.

1. The Federal Power Commission has jurisdiction of an application by an intrastate company, distributing artificial gas locally, for an order pursuant to § 7(a) of the Natural Gas Act, 15 USCA § 717f, directing an interstate pipe-line company to extend its facilities, to establish physical connection, and to sell natural gas to the applicant for distribution, where, upon completion of such connection, the applicant would be a "natural gas company" within the meaning of the act, p. 66.

Certificates of convenience and necessity, § 5 — Jurisdiction of Federal Power Commission — Gas extension.

2. The Federal Power Commission has jurisdiction of an application by a company distributing artificial gas locally for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas transmission line extending to connect with the facilities of an interstate pipe-line company, when, by reason of the connection, the gas company will become a "natural gas company" within the meaning of the Natural Gas Act, p. 66.

Service, § 6 — Authority of Federal Power Commission — Gas extensions and connections.

3. Congress, by § 7(a) of the Natural Gas Act providing that the Federal Power Commission "may" by order direct a natural gas company to extend service if such action is found to be necessary or desirable in the public interest, vested in the Commission broad discretion in dealing with cases involving the exercise of authority to require the extension and connection of facilities and the rendition of additional service, p. 67.

Service, § 205 — Interstate gas connection — Local authority of distributing company.

4. The Federal Power Commission cannot find that it is desirable or necessary to direct a pipe-line company to extend its facilities and make a physical connection with a distributing company proposing to substitute natural gas for artificial gas when the applicable state law has been amended, since the grant by the state Commission of authority for pipe-line construction, the effect of which has not been passed upon by the state court, and where the largest city served by the distributing company has not authorized a changeover from artificial to natural gas pursuant to state law; in the cir-

cumstances it is inappropriate to find that the action which the Commission is requested to take, pursuant to § 7(a) of the Natural Gas Act, is necessary or desirable in the public interest, p. 68.

(SMITH, Commissioner, dissents.)

By the COMMISSION: The abovenamed company ("applicant") seeks, in Docket No.G-236, an order pursuant to § 7(a) of the Natural Gas Act, 15 USCA § 717f, directing Natural Gas Pipeline Company[1] to extend its transportation facilities, to establish physical connection of such facilities with those of applicant at the Illinois-Wisconsin State line near Genoa City, Wisconsin, and to sell natural gas to applicant for distribution in southeastern Wisconsin. In Docket No. G-536, a certificate of public convenience and necessity is sought to authorize applicant to construct and operate a 4½-inch outside diameter natural-gas transmission line extending northward from such proposed connection for a distance of approximately 50,000 feet to applicant's existing gas facilities at Lake Geneva, Wisconsin.

Applicant is presently engaged in the manufacture of gas and its transportation and distribution to consumers in a number of municipalities in Racine, and Walworth counties, Wisconsin, including Burlington, Lake Geneva, Williams Bay, Delavan, and Elkhorn. The object of these applications is to enable applicant to substitute straight natural gas for the manufactured gas now being served to its consumers.

These proceedings were consolidated for purposes of hearing, and after appropriate notice, hearings were held from May 11 to May 15, 1944. Oral argument was heard on July 12 by the Commission sitting en banc. Numerous representatives of coal, railroad, and labor interests, and the city of Milwaukee, intervened and opposed the applications. Interested state Commissions, including the Public Service Commission of Wisconsin, were invited to participate in the hearing, but none appeared.

Jurisdiction

[1, 2] The evidence clearly establishes our jurisdiction to entertain the applications. Pipeline Company transports natural gas from the Panhandle field in Texas, through Oklahoma, Kansas, Nebraska, and Iowa into Illinois, and is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in Illinois Commerce Commission v. Natural Gas Pipeline Co. of America, Docket Nos. G-109 and G–112 (1940) 2 Fed PC 218, 223, 35 PUR(NS) 41, affirmed (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736. The evidence shows that applicant is engaged in the local distribution of artificial gas within the meaning of § 7(a) of the act; that the facilities which it proposes to construct are intended to be used for the transportation of natural gas in interstate commerce and that upon the completion thereof applicant would be a "natural-gas company" within the meaning of

[1] Hereinafter referred to as "Pipeline Company."

the act.[2] Thus, its proposed construction and operation are subject to §§ 7(c) and 7(e) of the act, as amended, requiring a certificate of public convenience and necessity.[3]

Source of Gas

Applicant manufactures its present supply of gas at its gas manufacturing plant located in Burlington. Such gas is transported to the communities served through 61½ miles of 3, 4, and 5-inch transmission lines, and is distributed to applicant's customers through approximately 96 miles of distribution lines.

Applicant proposes to discontinue the manufactuure of artificial gas and convert its system to the use of straight natural gas. In order to make such change-over in service, it would be necessary for Pipeline Company to construct approximately 6,000 feet of transmission pipe line extending from a point on its existing 20-inch transmission line near Richmond, Illinois, to the terminus of applicant's proposed pipe line at the Illinois-Wisconsin boundary and, in addition, to obtain necessary authority for the construction of two complete railroad crossings on the 20-inch line.

It should be noted, however, that Pipeline Company is not before us seeking authority under §§ 7(c) and 7(e) to make the contemplated sale of natural gas. Additionally, although it has obtained a certificate under the "grandfather" provision of the act for certain of its facilities, Pipeline Company does not seek authority to operate the 29-mile segment of its 20-inch pipe line extending between Belvidere and Richmond, Illinois, through which the applicant herein would be required to receive its supply of natural gas.

Section 7(a) of the Act

[3] These proceedings require careful consideration of the language of § 7(a) of the Natural Gas Act, 15 USCA § 717f, providing:

"Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it *may* by order *direct* a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: Provided, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers." (Italics supplied.)

Under § 7(a) we "*may*" by order

[2] See Re East Ohio Gas Co. Docket No. G-458, Opinion No. 109 (1943) 52 PUR(NS) 91.

[3] It is noted that although applicant raised some question respecting our jurisdiction in Docket No. G-536, at the hearing its counsel conceded that if applicant converts its pipe-line system to natural gas the Commission "probably will have jurisdiction."

"direct" a natural gas company to extend its service if such action is found to be *"necessary or desirable in the public interest."* From an examination of the language of this section, it is apparent, that Congress vested in the Commission broad discretion in dealing with cases involving the exercise of authority to require the extension and connection of facilities and the rendition of additional service.

State and Municipal Action

[4] It is claimed by applicant that the action of the Wisconsin Public Service Commission, in April, 1942, pursuant to § 196.49, Wisconsin Statutes, authorizing applicant to construct some 10 miles of 3-inch outside diameter pipe line to connect its facilities at Lake Geneva with those of the Pipeline Company at the Illinois-Wisconsin state line at a point near Genoa City, together with terminal facilities at Lake Geneva, and permitting the substitution of natural gas for manufactured gas is a sufficient authorization within the requirements of Wisconsin state law. Re Wisconsin Southern Gas Co. (Wis 1942) 45 PUR(NS) 8. However, the application in the instant proceeding is for a 4½-inch outside diameter line.

Moreover, effective April 17, 1943, two new subsections to the Wisconsin Public Utilities Act were enacted, viz., §§ 196.49 (4a)[4] and 196.58(6).[5] It is contended by those who oppose the applications in these proceedings that these new provisions of the Wisconsin Statutes require approval of both the Wisconsin Commission and the municipal council of each city, town, or municipality affected as essential prerequisites to the substitution of natural gas for manufactured gas in Wisconsin. It is clear that applicant has not applied for nor secured such a certificate subsequent to the enactment of this new legislation. We do not undertake to pass upon this matter since it involves a question of statutory construction which, to our knowledge, has not yet been passed upon by the Wisconsin courts. However, it is believed that this situation cannot be overlooked by us in determining whether we should exercise our discretion under § 7(a) of the Natural Gas Act.

Furthermore, the record clearly shows that the city of Burlington has not authorized the proposed change-over from artificial to natural gas.[6] More than one-fourth of applicant's customers are located in that city—the largest of the communities served by it. Although authorizations have been granted by certain other communities,

[4] Section 196.49 (4a) requires, among other things, that the municipal council shall have first approved and authorized such substitution, pursuant to § 196.58(6), before a certificate of public convenience and necessity may be issued therefor by the Wisconsin Commission, and that in determining whether a certificate should be issued due consideration is to be given to the social and economic effects of the proposed substitution upon employment, existing business and industries, railroads and other transportation agencies and facilities, the state, any of its political subdivisions, or any citizen or resident thereof.

[5] Section 196.58(6): "No public utility furnishing and selling gaseous fuel to the public shall change the character or kind of such fuel by substituting for manufactured gas any natural gas or any mixture of natural and manufactured gas for distribution and sale in any town, village, or city unless the municipal council thereof shall, by authorization, passage, or adoption of appropriate contract, ordinance, or resolution, approve and authorize the same. No such contract, ordinance, or resolution, nor any failure or refusal by such municipal council to authorize, pass, or adopt the same shall be subject to the review provided by subsection (4) of this section."

[6] Application for permission to distribute natural gas in Burlington has been made, but approval thereof has not been obtained.

it is evident from the record that the proposed project would not be undertaken if the market in Burlington is unavailable.

In the light of the foregoing circumstances, should we find that it is desirable or necessary to "direct" the extension and physical connection of facilities requested by applicant? We think not. Obviously we cannot compel local distribution of natural gas. State and local authorities have responsibility over such aspects of the company's business. Although we are cognizant of our broad authority under § 7(a) of the Natural Gas Act, it is our desire to achieve "a wise accommodation between the needs of central control and the lively maintenance of local institutions." [7] Therefore, in exercising our discretion under such section, we look with disfavor upon an interpretation susceptible of implying coercive action on our part, especially in the absence of appropriate state and local authority. We believe this view is reasonable and consistent with that of the Supreme Court of the United States in Ohio Pub. Utilities Commission v. United Fuel Gas Co. (1943) 317 US 456, 467, 87 L ed 396, 46 PUR(NS) 257, 264, 63 S Ct 369, wherein, in discussing the Natural Gas Act, it is stated:

"It is clear, as the legislative history of the act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the act, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious, dual system of regulation of the natural gas industry—Federal and state regulatory bodies operating side by side, each active in its own sphere. See H. Rep. No. 2651, 74th Cong. 2d Sess. pp. 1–3; H. Rep. No. 709, 75th Cong 1st Sess, pp 1–4; Sen Rep. No. 1162, 75th Cong. 1st Sess."

In the circumstances, we think it is inappropriate to find that the action which we are requested to take pursuant to § 7(a) is "necessary or desirable in the public interest." In view of this conclusion, it would appear unnecessary to discuss the other aspects of these proceedings.

Accordingly, an appropriate order will be entered dismissing the applications in both dockets.

SMITH, Commissioner, dissenting: The applications herein should not, in my opinion, be dismissed on the grounds stated; findings should be made which would permit the issuance of the order and certificate sought upon a proper subsequent showing a full compliance with local requirements and subject to such further conditions as might be appropriate.

It has been shown upon the record that for applicant to long continue its present service will require rehabilitation of its gas-manufacturing facilities at a cost of some $48,000. Even after such rehabilitation, the future of this important local service seems uncertain, while the relief of the customers from the relatively high rates under

[7] See Palmer v. Massachusetts (1939) 308 US 79, 84, 84 L ed 93, 31 PUR(NS) 242, 60 S Ct 34.

which service is now rendered appears unlikely. The substitution of natural gas, on the other hand, while it would require an outlay by applicant of about $79,000, would result in a reduction of operating expenses in the estimated amount of $73,000 annually. On this basis, and reducing manufactured and natural gas to equivalent terms, an over-all rate reduction of about 20 per cent—equivalent to a reduction of nearly 30 per cent in the rates for residential cooking and water-heating service, constituting about three fourths of its present total load—is proposed by applicant, subject to the regulatory jurisdiction of the Wisconsin Commission. It seems clear, therefore, that the proposed substitution would be in the interest of both applicant and its present customers, without taking into account possible further advantages which might result from the potential expansion of the market.

As to Pipeline Company the record is equally clear. Its existing transmission facilities, except for two railroad crossings, are now complete to within about 6,000 feet of the proposed connection with applicant, although approximately 29 miles of this pipe line are not now in use under operating authority of this Commission. The total cost of the construction required is estimated at about $20,600. War Production Board authorization has been secured for the necessary materials and for the delivery of natural gas to applicant at a rate not to exceed 345 thousand cubic feet per day. Pipeline Company has stated its willingness to serve applicant if directed to do so and its ability to render adequate service to its customers without impairment by reason of the comparatively small deliveries of gas contemplated, which would amount to about 0.1 per cent of the total rated capacity of its system. Conservatively estimated, available reserves now appear adequate for at least nineteen years.[1]

From these facts I think we should conclude that the public convenience and necessity require the construction and operation of the facilities proposed by applicant, and that the order sought directing Pipeline Company to extend its facilities to physically connect with and to sell natural gas to applicant would be desirable in the public interest. The principal remaining question, which is the one chiefly dealt with in the majority opinion, concerns the willingness and ability of applicant to perform the service proposed.

On this score, it may be questionable whether further approval by the Wisconsin Commission is required by reason of the revision of the state statutes in 1943 and the increase in outside diameter of applicant's proposed pipe line. This, I take it, is a matter for determination by the courts of Wisconsin, rather than by this Commission, yet our action herein, based in part on the construction that such further approval may be required, may effectively foreclose such determination as a practical matter. Likewise

[1] *Cf.* G–531 and G–544, Re Interstate Natural Gas Co. (1944) certificate permitting extension of facilities where life of reserves estimated at twelve to thirteen years; G–443, G–306, G–307, and G–308, Re Southern United Gas Co. (1943) 50 PUR(NS) 97, certificate permitting acquisition of facilities where known reserves sufficient for fifteen to twenty years; G–442, Re Lone Star Gas Co. (1944) certificate to successor company where life of reserves estimated at about fifteen years.

applicant's inability to secure action—either favorable or unfavorable—by the municipal council of the city of Burlington on its application to substitute natural for manufactured gas, although such permission has been secured from the local authorities of all the other communities served, does not seem to me sufficient reason for failure to deal at this time with the applications on their merits. I share the view that we should of course be guided by the wishes of the people of Wisconsin regarding the use of natural gas, and I recognize the fact that, unless the necessary authority were secured from the city of Burlington, which is the largest community served, the proposed substitution would probably not be effected, even for those communities which have already indicated their desire for it.[2] To dismiss the applications now, however, may well preclude any expression on the part of the city of Burlington, whereas the entry of findings which would permit the subsequent granting of a certificate of convenience and necessity, contingent upon compliance with all local requirements, would almost necessarily result in a definite expression—either pro or con—from that city. If the customers of Burlington wanted natural gas, they could get it; if they expressed a preference for the continuation of manufactured gas, they could effectively prevent the proposed substitution. In either event, the local authority would be decisive.

The entry of findings regarding public interest or convenience and necessity prior to the final disposition of certificate cases is not without precedent. The Commission has not hesitated to indicate its intention to authorize the issuance of such certificates provided satisfactory further showings are made by applicants.[3] In the present instance it seems to me that this would afford a proper means of ensuring adequate protection of local interests and points of view in so far as the issuance of the § 7(e) certificate to applicant is concerned. It would also constitute a means of providing for the proper application for and issuance of any § 7(e) certificate to Pipeline Company deemed necessary in connection with the § 7(a) order which it has stated its willingness to accept. And it would have the advantage, both to applicant and to those of its customers who have indicated their desire for natural gas, of avoiding further extended proceedings or additional obstacles should they wish to continue their efforts to effect the substitution.

In this proceeding a number of intervenors, representing coal, labor, and railway interests, opposed the granting of the applications. For the most part, they seemed concerned not so much with the substitution immediately proposed as with its possible effects upon the introduction of natural gas into the state of Wisconsin and the possibility that it might ultimately reach the Milwaukee market. It seems un-

[2] The record shows that the cities of Delavan, Elkhorn, and Lake Geneva, the village of Williams Bay, and the townships of Delavan, Geneva, Lyons, Lynne, and Walworth have granted the necessary ordinances or certificates.

[3] Opinion 39, G-106 and G-119, Re Kansas Pipe Line & Gas Co. and North Dakota Consumers Gas Co. (1939) 2 Fed PC 29, 30 PUR (NS) 321; Opinion 93, G-230; Re Tennessee Gas & Transmission Co. (1943) 50 PUR (NS) 199; Opinion 114, Re Hope Nat. Gas Co. (G-507), New York State Nat. Gas Corp. (G-508), Manufacturers Light & Heat Co. and Manufacturers Gas Co. (G-510), United Fuel Gas Co. (G-516), and Home Gas Co. (G-519), pp. 19-21 (1944).

necessary to point out that this broader question is not now before us in this proceeding. To the extent, however, that intervenors objected to the instant proposal as such, they were concerned chiefly with a possible, and highly conjectural, postwar expansion of the use of natural gas for boiler fuel in the area served by applicant. In view of the pendency of the comprehensive Natural Gas Investigation recently instituted by the Commission,[4] it may again be unnecessary to touch here upon the problems of conservation and utilization which the contentions of these intervenors involve. It is sufficient to point out the complications created, in terms of public interest and national policy, by such factors as the extensive industrial use of gas in the producing areas and limitations upon this Commission's authority, including the lack of regulatory jurisdiction over direct interstate sales of natural gas for industrial use. These are matters which will doubtless be explored fully in the course of the pending investigation. But it may be pointed out here that the Commission has not infrequently authorized the issuance of certificates when large amounts of gas were to be used for boiler-fuel purposes,[5] while in other situations it has so conditioned its approvals as to restrict such use.[6] If the threat of boiler-fuel use in the present instance were deemed to justify such action, an appropriate condition could no doubt be imposed in connection with any certificate which might be issued.

ORDER

Upon consideration of the entire record herein, the Commission, having this day adopted its Opinion No. 118, which is referred to and made a part hereof by reference, *orders* that:

(A) The application of Wisconsin Southern Gas Company ("applicant") in Docket No. G–236, for an order pursuant to § 7(a) of the Natural Gas Gas Act directing Natural Gas Pipe Line Company to extend its transportation facilities, to establish physical connection of such facilities with those of applicant at the Illinois-Wisconsin state line near Genoa City, Wisconsin, and to sell natural gas to applicant for distribution in southeastern Wisconsin, be and it is hereby dismissed.

(B) The application of Wisconsin Southern Gas Company ("applicant") in Docket No. G–536, for a certificate of public convenience and necessity to authorize applicant to construct and operate a $4\frac{1}{2}$-inch outside diameter natural-gas transmission line extending northward from a point on the Illinois-Wisconsin State line near Genoa City, Wisconsin, for a distance of approximately 50,000 feet to applicant's existing gas facilities at Lake Geneva, Wisconsin, be and it is hereby dismissed.

[4] G–580, Re Natural Gas Investigation, instituted by Order of September 22, 1944.

[5] *E.G.*, G–398, Re United Gas Pipe Line Co. (1943); G–469, Re Colorado Interstate Gas Co. (1943); G–468, Re Interstate Nat. Gas Co. (1943); G–525, Re Kansas-Nebraska Nat. Gas Co. (1944), a large amount of the gas in this case, however, to be used by the Hastings, Nebraska, Naval Base.

[6] *E. G.*, Opinion 114, Re Hope Nat. Gas Co. (G–507), New York State Nat. Gas Corp. (G–508), Manufacturers Light & Heat Co. and Manufacturers Gas Co. (G–510), United Fuel Gas Co. (G–516), Home Gas Co. (G–519), p. 19 (1944); Opinion 114-A, ibid, pp. 9–10 (1944).

OHIO PUBLIC UTILITIES COMMISSION

The East Ohio Gas Company

v.

City of Cleveland

Nos. 11,001, 11,218, 11,442
November 20, 1944

APPEAL *from ordinance prescribing rates for residential and commercial gas service; rates held to be inadequate and substitute rates established.*

Rates, § 32 — Functions of Commission — Review of ordinance rates — Administrative action.

1. The Commission acts administratively either when it exercises its legislative discretion to fix and determine just and reasonable rates or when it finds and declares that a rate fixed by ordinance is just and reasonable, p. 77.

Return, § 21 — Reasonableness of rate — Nonconfiscatory rates.

2. The function of the Commission, on appeal from a rate ordinance and in fixing a substitute rate for the rate established by the ordinance, is not to establish a rate which may be merely nonconfiscatory but rather the establishment of a rate that is fair and reasonable, p. 77.

Valuation, § 10 — Valuation formula — Appeal from ordinance rates.

3. The Commission is confined by statute, in the determination of fair and reasonable rates of a gas utility, to the use of the valuation procedure as set forth in the statute, whether it be in the initial determination of the reasonableness of a rate ordinance or in the determination of a substitute rate, p. 77.

Valuation, § 79 — Reproduction cost — Steel prices.

4. The prevailing price for steel pipe was used in arriving at reproduction cost new as of the valuation date, p. 80.

Valuation, § 275 — Reproduction cost of pipe line — Performance estimates.

5. Performance estimates of Commission engineers based on detailed studies of company property, terrain wherein lines were constructed, and on numerous studies made on construction of lines of this company and other companies in the state, were used in arriving at cost of reproduction of pipe lines, p. 80.

Valuation, § 80 — Reproduction cost — Labor rates — Union wages.

6. Prevailing wage rates for common labor by union members engaged in construction work should be used in determining reproduction cost rather than a wage rate which an officer of another union testifies could be put into effect if common labor of his union should be organized for the project and if city officials would restrain interference on the part of the other union, p. 80.

Valuation, § 167 — Reproduction cost of paving.

7. The actual cost of replacing paving cut in laying distribution lines and service lines is more accurate in determining reproduction cost than hypothetical estimates as of a date certain, p. 80.

Valuation, § 373 — Natural gas leases.

8. The value new of developed natural gas leases should be based upon a determination of the average cost of developing a producing acre from the actual experience of the company, instead of determining the total of exploration costs and arriving at the cost per acre by dividing this cost by the sum total of all acreage developed from explorations plus the undeveloped acreage owned by the company as of the valuation date, since the inclusion of acreage not proven to be productive to determine the cost of obtaining a producing acre is incorrect, p. 81.

Valuation, § 93 — Depreciation of general overheads.

9. General overheads should be treated as depreciable in the absence of evidence relative to survival of values attributable to such overheads after retirement of the related property, p. 82.

Valuation, § 150 — Overheads — Taxes during construction.

10. An allowance of 2 per cent was made for taxes during construction of a gas utility, p. 82.

Valuation, § 139 — Overheads — Interest during construction.

11. Interest during construction is dependent upon the average cost of money during construction and the average length of time that capital is invested prior to the property being placed in service, p. 82.

Valuation, § 309 — Working capital — Gas utility.

12. A gas utility was allowed for working capital one-eighth of the annual operating expenses (exclusive of gas purchased from an affiliated company, rate case expense, depreciation, and depletion) plus the average amount of materials and supplies on hand, p. 83.

Valuation, § 105 — Accrued depreciation — Gas well equipment — Salvage.

13. Salvage value of gas well equipment, in determining accrued depreciation, or depletion, should be computed as salvage net after cost of abandonment of the well, instead of treating the total worth of all removed well equipment as salvage and charging to expense the cost of abandoning the well, p. 83.

Valuation, § 101 — Accrued depreciation — Inspection of pipe lines.

14. Recent inspections of gas pipes were accepted as the most reliable evidence of accrued depreciation of such property in preference to estimates based on book records of property additions, retirements, and plant balances, p. 84.

Valuation, § 98 — Accrued depreciation — General property — Adjustment of prior determination.

15. Accrued depreciation on general property of a gas utility was determined by bringing forward the accrued depreciation of such property as determined at an earlier date, with a deduction for annual depreciation and giving effect to property additions and property retirements, in preference to a determination based on book records of property additions, retirements, and plant balances on the assumption that what had happened in the past in regard to property since retired was the basis for assumption that

the same experience would prevail in regard to the property now in service—the determination being treated as an abstract accounting problem, p. 84.

Expenses, § 135 — Natural gas utility — Cost of abandoning wells.

16. Cost of abandoning natural gas wells should be excluded from operating expenses when the net salvage method is used in arriving at the present value of well equipment, p. 85.

Expenses, § 49 — Annuity payments — Addition to fund — Amortization.

17. A company which has paid into an annuity trust fund an amount necessary to meet annuity payments instead of charging to operating expenses each year the amount necessary to make up the full payments should be permitted to amortize such lump sum payment over a 10-year period, p. 86.

Expenses, § 114 — Federal income tax.

18. A company which is not seeking an increase in rates, but is contesting an ordinance reducing rates to residential and commercial customers, should be allowed as an operating expense Federal income taxes increased on account of war, instead of being limited to the combined normal and surtax rates for the year 1939, where revenue increases from sales of gas for industrial purposes have been credited to cost of service and by this treatment residential and commercial users receive the benefit from all war profits from the industrial sales, p. 87.

Expenses, § 86 — Payments to affiliates — Gas purchases — Rate on file with Federal Commission.

19. A state Commission must allow as an operating expense of a gas utility the amount paid to an affiliate for natural gas purchased where this was the rate filed with the Federal Power Commission and was the only rate which, under the terms of the Natural Gas Act, could be charged by the affiliated company, p. 89.

Expenses, § 5 — Powers of Commission — Payments to affiliates — Gas purchases — Rates established under Natural Gas Act.

20. A state Commission has no statutory authority, under the Natural Gas Act or otherwise, to compel a gas utility company a pay to its consumers the difference between wholesale rates of an affiliate established under the Natural Gas Act and rates which the Federal Power Commission indicated would have been reasonable, by disallowing the difference as an operating expense, where the Federal Power Commission had no authority to order repayment of the difference to consumer companies and the distributing company has never received the difference back from the interstate company, p. 89.

Return, § 26 — Reasonableness — Cost of capital.

21. Cost of capital as a measure of the reasonableness of return should be based upon a coincident yield on bond, preferred stock, and common stock money, p. 91.

Return, § 101 — Natural gas utility.

22. The return of a natural gas company was fixed at 6½ per cent on the value of the property used and useful in furnishing service, p. 91.

Rates, § 307 — Charges for meter setting and turning on gas.

23. A rate structure which provides for charges for meter setting and turning on gas is not a desirable one; and a rate should be established which will meet the cost of service without the imposition of such charges, p. 94.

Rates, § 5.1 — Substitute for ordinance rates — Stabilization Act.

24. A rate found by the Commission to be reasonable as a substitute for an inadequate rate fixed by ordinance prior to the enactment of the Emergency Price Control Act of 1942 and the Amendment thereto of October 2, 1942, which substitute rate is substantially lower than the rate which was collected on September 15, 1942, should be established, p. 94.

By the COMMISSION: This matter comes before the Commission on the complaint and appeal of The East Ohio Gas Company as to ordinances passed by council of the city of Cleveland, Ohio, on May 22, 1939, November 20, 1939, and May 20, 1940, which ordinances fixed for terms of six months each the rates to be charged for natural gas furnished to residential and commercial customers in the city of Cleveland The three ordinances all provide the same rates, namely:

First 2 M cu. ft. ..... 48¢ per M cu. ft.
All over 2 M cu. ft. ..... 55¢ per M cu. ft.
Minimum Charge ..... 75¢ per month

Pending determination of the reasonableness of the above rates, the utility elected, pursuant to statutory provisions, to collect during the pendency of the appeal the rates previously in effect, namely:

First 400 cu. ft. or less, or none, measured through any one meter, 80¢.
For all over 400 cu. ft. per month measured through such meter, per month, 5½¢ per one hundred cubic feet.

As provided by § 614–45, the utility has filed a bond to guarantee the refund of all amounts collected by it in excess of the final rate determined.

The city of Cleveland filed a motion to dismiss the above appeals for lack of jurisdiction. This Commission overruled the motion to dismiss, whereupon the city of Cleveland appealed to the supreme court of the state of Ohio and secured a temporary writ of prohibition relative to proceeding with hearings before the Commission on the merits of the case. On December 10, 1940, the supreme court of the state of Ohio in State ex rel. Brainard v. McConnaughey, 137 Ohio St 431, 38 PUR(NS) 167, 30 NE (2d) 699, sustained the action of the Commission in denying the motion of the city of Cleveland and held therein that in the event this Commission should, in an appeal under § 614–44, find the ordinance rates to be unreasonable, substitute rates should be fixed for a reasonable period which should be for not less than two years.

Following this decision of the supreme court of the state of Ohio, hearings in this case were held in March, May, November, and December of 1941, occupying a total of thirty-two days. Extensive briefs were filed in 1942 and in February, April, and May of 1943, an additional seven days of hearings brought the evidence in the case up to date. At that time the Commission's engineers submitted certain testimony relative to the value of the property used and useful in furnishing the service. Final arguments were made on June 9 and 10, 1943.

Shortly after these final arguments were made it became apparent that the case of Federal Power Commission v. Hope Nat. Gas Co. then pending in the Supreme Court of the United States ([1944] 320 US 591, 88 L ed

276, 51 PUR(NS) 193, 64 S Ct 281), would be argued in the early fall and a final decision rendered shortly thereafter relative to the wholesale rate which East Ohio pays the related Hope Natural Gas Company for about 75 per cent of its gas requirements. On January 3, 1944, the Supreme Court of the United States affirmed the order of the Federal Power Commission reducing the rates of Hope to East Ohio to an average rate of 29½ cents per thousand cubic feet on and after July 15, 1942.

The city of Cleveland shortly thereafter filed an application for the reopening of the present case to permit the submission of additional evidence relative to the Hope rate. This application was granted and at the same time an order was issued ordering East Ohio to submit evidence bringing down to date its operating results. Hearings were held on June 5, 1944, and the case was then finally submitted for disposition.

Early in 1943, in conformity with the provisions of § 1 of the act of October 2, 1942 (Public Law 729, 77th Cong.), entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation and for other purposes," East Ohio filed with the Price Administrator of the Office of Price Administration a notice of the pendency of the present case and a consent to intervention by the Price Administrator. On application to this Commission the Price Administrator in an order dated January 27, 1943, was authorized to intervene and thereafter counsel for the Price Administrator participated in all subsequent hearings and in the final argument.

[1–3] In its "Memorandum of Law on What is a Just, Reasonable, and Nonconfiscatory Ordinance Rate" the city states at page 1:

"A. There is no statutory provision imposing upon the Commission any formula by which it shall decide the question whether an ordinance rate is just and reasonable, or unjust and unreasonable."

At page 2 thereof it further states:

"The legislature has appropriately provided no formula for council to follow because council in fixing a maximum rate acts legislatively. East Ohio Gas Co. v. Cleveland (1938) 24 PUR(NS) 221, 94 F(2d) 443, cert. den. (1938) 303 US 657, 82 L ed 1116, 58 S Ct 761. The legislature has provided a valuation formula for this Commission to follow when the Commission fixes a substitute rate only because this Commission in fixing a substitute rate acts administratively."

The city further calls our attention in its memorandum to a former opinion of this Commission, East Ohio Gas Co. v. Cleveland (1934) 4 PUR(NS) 433, 437, in which the Commission said:

"There is no statutory provision imposing upon the Commission any rule by which it shall decide the preliminary question as to whether the ordinance rate is, as a matter of fact, unreasonable but when the Commission has determined that it is unreasonable and begins its investigation through which it is to determine the rate to be fixed by the Commission then there are specific statutory directions that must be followed."

It is apparent in its discussion of this subject that the city has in mind the possible use by council of more

than one formula for the determination of a rate base and further that this Commission is free in the determination of the reasonableness of a rate ordinance to employ such formulae.

It would therefore follow that this Commission "may find and declare" that a rate fixed by ordinance is just and reasonable by the use of one or several formulae, although if the Commission, in its judgment, predicated on one or more of these formulae "shall be of the opinion that the rate . . . so fixed by ordinance is or will be unjust or unreasonable" then it must use but one formula, namely, the statutory valuation procedure in the determination of a "just and reasonable" rate. The above quotations are from § 614–46 General Code.

We agree with the city that in fixing a substitute rate we are acting administratively, but it is not stated in what capacity we act when we "find and declare the city rate . . . so fixed by ordinance is just and reasonable and ratify and confirm the same." If the Commission in determining the reasonableness of an ordinance rate is not bound by any formula, then as a practical matter it would seem to follow that the Commission should adopt the formula or formulae employed by the city in its determination of a fair and reasonable ordinance rate. Unless this were done it would seem impossible for the two bodies, a city council and this Commission, ever to arrive at the same just and fair rate because it is well known that results may vary depending upon the formula used. It is obvious in this case that the city would not present this argument unless such a result would ensue. On an appeal to this Commission by a public utility from a rate ordinance it is required to bear the burden of establishing the unreasonableness of the ordinance rate. This proof is made to the Commission. Is it contemplated that the utility in such case would be limited in its proof to evidence which would be competent only under use of the formula adopted by the city in arriving at the ordinance rate? Is it contemplated that such evidence, if it is not evidence relating to valuation as required by the Ohio statutes, shall not be used or considered by the Commission in fixing a reasonable substitute rate if the ordinance rate is found to be unreasonable? It would seem to follow from the argument advanced that evidence competent in one instance on the question of fairness and reasonableness would be incompetent in the same proceeding upon the same question. We do not believe that this Commission had this result in mind at the time the foregoing statement was made by it and the record of that case refutes the contention that the Commission intended such consequences.

In our opinion we are acting administratively either when we exercise our legislative direction to "fix and determine the just and reasonable rate" or when we "find and declare that the rate . . . so fixed by ordinance is just and reasonable." Our function in passing upon an ordinance rate is to determine its justness and fairness not whether it is confiscatory. In fixing a substitute rate our legislative mandate is to fix a fair and reasonable rate. It may be true that a rate fixed by a city council in the exercise of its legislative power may be nonconfiscatory in the judicial sense but nevertheless

unjust and unreasonable. It is likewise true that a rate fixed by this Commission may be fair and reasonable from the standpoint of both the utility investor and the consumer and be much above the zone of confiscation. In other words, the function of this Commission it seems to us is not to establish a rate which may be merely nonconfiscatory but rather the establishment of rates that are fair and reasonable. We believe that the interpretation placed upon the statutes of Ohio by the supreme court of this state have confined us in the determination of fair and reasonable rates of a gas utility to the use of the valuation procedure as set forth in the statutes whether it be in the initial determination of the reasonableness of a rate ordinance or in the determination of a substitute rate.

Rate Base

In addition to the local distribution system, the property of the East Ohio Gas Company used in furnishing gas to users in Cleveland included a proportion of production, transmission, and general property which because of its functional nature is used in the system-wide operations. City and company are in agreement as to the method of allocation of the portion of these groups of property assigned to the service of users in Cleveland. The city and company have made further agreements relative to the reproduction cost new and the present value of certain items of property. Increased demands for service and depletion of gas reserves in the Appalachian area during the period since June 30, 1939, have necessitated substantial additional investments on the part of the company. The valuations set forth herein will include the additional facilities added from year to year.

The major differences between the parties are in regard to the reproduction costs new and accrued depreciation of the pipe line accounts, namely, Account 213, Field Line Construction; Account 214, Field Line Equipment; Account 226, Transmission Line Equipment; Account 234, Distribution Line Equipment, and Account 235, Service Line Equipment. The reproduction costs new submitted are as follows:

Reproduction Cost New as of June 30, 1939

Acct. No.	Description	Company	City	Commission's Engineers
213	Field Line Construction	$1,075,256	$883,033	$930,482
214	Field Line Equipment	1,707,652	1,434,744	1,464,339
226	Transmission Line Equip.	13,483,796	10,235,567	11,083,468
234	Distribution Line Equip. (Exclusive of Pavement Removed and Replaced)	18,275,230	13,344,714	16,807,255
	Pavement Replaced	712,028	393,514	393,514
	Total Account 234	$18,987,258	$13,738,228	$17,200,770
235	Service Line Equipment (Exclusive of Pavement Removed and Replaced)	2,106,676	1,982,334	2,068,121
	Pavement Replaced	22,291	15,028	15,028
	Total Account 235	$2,128,967	$1,997,362	$2,083,149
	Less: Ten per cent of net mill prices of line pipe	(1,294,769)	.....	.....
	Total Pipe Line Accts.	$36,088,160	$28,288,934	$32,762,208

The differences between city and company in regard to reproduction cost new of Field Line Construction, Field Line Equipment, and Transmission Line Equipment, are due to differences in prices for steel pipe and differences in manual and machine performance in excavating and backfilling trench for pipe. There is also a difference in the estimates of the amount of trenching that may be done by trenching machine.

[4–7] The differences between city and company estimates of cost of reproduction new of Distribution Lines and Service Lines are due to differences in prices for steel pipe, differences in performance for manual and machine excavation and backfill, and differences as to the wage rate for common labor. There is an additional difference in the amounts included for cost of replacement of paving actually removed and replaced in the installation of lines and services. The company inclusion for this item is an estimated cost of replacement as of the date certain, whereas the amount included by the city is the sum of the actual amounts paid for replacement of this paving at the time it was replaced.

As regards the price of steel pipe as of June 30, 1939, the company used a price of $54 per ton for plain end pipe. The city used prices of $45 per ton for pipe 6 inches in diameter and smaller and $42.63 for pipe larger than 6 inches diameter. In the valuation of the property as of June 30, 1939, the Commission's engineers used a price of $44.44 per ton for plain end pipe and an average price of about $46 per ton for all steel pipe including screw pipe. The $44.44 per ton price was based on two large purchases made in the Appalachian area in 1940. The company represents that this average price is too low for the various sizes and tonnages of pipe in its system, even at a time of a distressed pipe market such as existed in 1939 and 1940. It is admitted by all parties that steel prices were abnormally low during the years 1939 and 1940. The testimony in the case discloses that in the year 1941 sales for large pipe-line projects were being made at an average price of $60 to $63 per ton, which is approximately the normal price for some years prior to 1939. In arriving at the reproduction cost new of the property as of June 30, 1939, and June 30, 1940, we use the price of $44.44 per ton for plain end pipe, that being the prevailing price for those dates from the evidence in the case. In arriving at the value of the property as of June 30, 1941, and thereafter, the 1941 prices averaging about $63 per ton are used.

As regards manual and machine performance in excavation and backfill for construction of field lines, transmission lines, and distribution lines, the record in the case indicates that the estimates of the city are not based on any actual experience in Ohio (Howson R. 1242–1244, 1271). The company has adopted the performances used by the Commission's engineers. These estimates of the Commission's engineers are based on detailed studies of the property of the company, the terrain wherein the lines are constructed and on numerous studies made on construction of the lines of this and other companies in the state of Ohio. In arriving at the costs of reproduction of the pipe lines of the company, the

performance estimates of the Commission's engineers are used.

The city and company are in agreement as to labor rates to be used on field and transmission lines as of June 30, 1939. They are not in agreement as to the rates for common labor for construction of the distribution lines in the city of Cleveland as of June 30, 1939. The city uses a rate of 62½ cents per hour for common labor, based on the testimony of its witness Fuller. The witness Fuller, an executive officer of the CIO, testified that in his opinion he could organize a sufficient force of common labor of CIO membership at a wage of 62½ cents per hour for construction of the distribution lines in Cleveland without interference from the American Federation of Labor building trades. It is admitted in the testimony that to date no such effort to invade the building trades in Cleveland has been made by the CIO and that to date all construction projects in Cleveland have been built by those of A.F. of L. membership. The record further discloses that contractors constructing lines within the city of Cleveland for the East Ohio Gas Company were paying for common labor as of June 30, 1939, the A.F. of L. rate of 85 cents per hour. The estimates of Mr. Fuller are predicated, as he states, on the assumption that in the event the common labor on this project were organized under the CIO he would depend upon officials of the city of Cleveland to restrain any interference on the part of the A.F. of L.

The possibility of hiring sufficient common labor enrolled in the CIO at a wage of 62½ cents per hour at a time when all such construction work in Cleveland is being done by A.F. of L. membership at a rate of 85 cents per hour is speculative. On the record in the case we are using a rate of 85 cents per hour for common labor in the determination of the cost of reproduction of the company's distribution system in the city of Cleveland as of June 30, 1939.

As regards the item of paving actually cut and replaced in laying distribution lines and service lines in the city of Cleveland, the actual cost of replacing the paving cut appears to be more accurate than the hypothetical estimates of the company.

The reproduction cost new of these items of property thus arrived at are as follows:

Acct. No.	Description	Reproduction Cost New
213	Field Line Construction ..	$930,482
214	Field Line Equipment ..	1,464,339
226	Transmission Line Equipment	11,083.468
234	Distribution Line Equipment	17,200,770
235	Service Line Equipment ..	2,083,149
	Total Pipe Line Accounts	$32,762,208

Other Items of Disputed Value New

Acct. 244 General Office Land

Acct. 245 Other General Land

The city and company are not in agreement on these land values and submit respectively the same values that were submitted in the 1937 case. On the record submitted and the statement by all witnesses that there has been no change in land values since the prior case, we see no reason to disturb the figures adopted by the Commission in that case.

Operating Leases Developed by the Company

[8] The company method of arriving at the value new of leases de-

veloped by the company is the same as used by this Commission in the 1937 case. This method consists of a determination of the average cost of developing a producing acre from the actual experience of the company. The method used by the city is the same in so far as the determination of the total of exploration costs, but in arriving at the cost per acre, the city divides this cost by the sum total of all acreage developed from these explorations plus the undeveloped acreage owned by the company as of the date certain. The method used by the city would be correct if as a result of these explorations the undeveloped acreage as of the date certain had been actually developed as productive acreage but was not presently used and useful but held in reserve. This acreage is not proven productive acreage and its inclusion as such to determine the cost of obtaining a producing acre is incorrect and results in a conclusion that is less than the actual cost to the company of obtaining a producing acre. The developed leaseholds are included in the reproduction cost new of the property on the same basis that was used in the 1937 case, which method of determination was reviewed and approved by the supreme court of the state of Ohio (1940) 137 Ohio St 225, 35 PUR(NS) 158, 28 NE(2d) 599.

General Overheads

The company has included in its valuation for general overheads 16.63 per cent which is the percentage used by agreement of city and company in the 1931 Cleveland Case and was first used by both city and company and then attacked by the city in the 1937 Cleveland Case. Of these 16.63 per cent of general overheads 63 per cent depreciate and 37 per cent do not depreciate. In the case at hand the city of Cleveland uses general overheads totaling 14.48 per cent. The differences are in amount 1 per cent on taxes during construction and 1.15 per cent in interest during construction shown as follows:

	Company	City *
Preliminary Organization	.5 %	.5 %
Engineering and Superintendence During Construction	4.5 %	4.5 %
Administrative and Legal Expenses During Contion	2.0 %	2.0 %
Taxes during Construction	2.0 %	1.0 %
Total above	9.0 %	8.0 %
Interest during Construction **	7.63%	6.48%
Total Overheads	16.63%	14.48%

* All depreciable whereas 63% of company overheads are treated as depreciable.

** Interest during construction, basic rates, company 7%, city 6%, and interest at these rates computed on the above 9% and 8% overheads.

[9–11] Counsel for the city of Cleveland in final argument stated that the effect of the testimony of city witness Howson was that 2 per cent was a proper allowance for taxes during construction if overheads depreciate. In actual experience the survival of value identified with general overheads after retirement of the property is speculative. Additional administrative and engineering costs are often attendant to replacement of property and where property is retired and no replacement made the propriety of retaining in plant and property any general overheads identified with the item retired may well be questioned. In the absence of agreement between the interested parties this Commission has always treated all general overheads as depreciable. The record in

the case at hand contains nothing convincing relative to survival of values attributable to general overheads after retirement of the related property. We will therefore treat all general overheads as depreciable and allow 2 per cent for taxes during construction. As to the item of interest during construction, this is dependent upon (a) the average cost of money during construction and (b) the average length of time that capital is invested prior to the property being placed in service. The city uses a 2-year period but does not state precisely how this is arrived at. The company urges that on the average more than two years would be required, but does not give effect to more than two years in arriving at the 7 per cent. As to money rates, it appears that the average cost of capital has decreased since 1931 when 7 per cent was agreed upon. In arriving at the allowance for interest during construction neither city nor company has set forth the financing program for the construction period. If all securities are marketed at the outset of the project, then such funds until invested in construction or land acquisition should have some earnings in the interim to be credited against interest and dividends during construction. If moneys for construction are received by sale of securities from time to time, the actual cost of money will depend upon how long such financing is done prior to the property being placed in operation. On the record before us it appears that the city allowance of 6.48 per cent for interest during construction is adequate.

Working Capital

[12] The city contends and has submitted the testimony of its witness Grinstead, to show that the company requires no cash working capital. The city contends that in its operations East Ohio is a fully integrated operating company, "daily collecting revenues and paying bills for services and materials, accumulating funds for the future payment of taxes and dividends and for depreciation and depletion" Therefore, concludes the witness for the city, no consideration has been given to hypothetical working capital which might be required to start a utility business. The testimony on this matter is not convincing. It does not fully reflect the working capital requirements of this company. It is admitted by the witness for the city that he knows of no case of record where no allowance was made for cash working capital. In the three cases cited by the city (Re Los Angeles Gas & E. Corp. [Cal] PUR 1931A 132, 144–146, 155; Re Peoples Gas Light & Coke Co. [Ill 1937] 19 PUR(NS) 177, 242, 243, 259; Re Brooklyn Borough Gas Co. [NY 1937] 21 PUR (NS) 353, 417, 420) substantial allowances were made for cash working capital, and the decisions thereon were merely in regard to allowances in arriving at the real requirements. Having reviewed the requirements of the East Ohio Gas Company there is allowed herein for working capital $\frac{1}{8}$ of the annual operating expenses, exclusive of gas purchased from Hope Natural Gas Company, rate case expense, depreciation and depletion, plus the average amount of materials and supplies on hand.

Accrued Depreciation

Gas Well Accounts:

[13] Both city and company use the rock pressure decline method of

determining accrued depreciation or depletion in Account 221, Gas Well Construction, and Account 212, Gas Well Equipment. The only disagreement is in regard to the treatment of salvage of well equipment in Account 212. The city in arriving at the salvage value of gas well equipment computes the salvage net after cost of abandonment of the well. The company treats the total worth of all removed well equipment as salvage and charges to expense the cost of abandoning the well. There is no disagreement as to amounts of salvage or cost of removal. The differences are in regard to accounting treatment of cost of removal of well equipment. The accepted method of treatment of this item in the latest published systems of accounts is the same as for other classes of property, namely, the net salvage method and we are therefore using the net salvage method in arriving at the present value of gas well equipment.

All Other Accounts:

[14, 15] The company suggests that the accrued depreciation be determined by giving effect to property additions and annual depreciation from the valuation in the 1937 case to date. The city in September, 1940, requested that pipe inspections be made in this case inasmuch as no such inspections had been made since 1931 and 1932. The city's motion was granted and under the supervision of the Commission's chief engineer the inspections were in October and November of 1940 by engineers for the city, company, and Commission. The city presented several exhibits relative to these inspections but did not base its estimates of accrued depreciation on these inspections. Instead the city relied on the estimates of depreciation made by its witness Benson whose calculations were based on book records of property additions, retirements, and plant balances for varying periods of years in the various accounts.

As to all property accounts other than wells, leaseholds, and general property, we have based the accrued depreciation on the determination of the Commission's engineers from the 1940 pipe inspections. The accrued depreciation on general property we have brought forward from June 30, 1938, by deduction for annual depreciation, and giving effect to property additions and property retirements. For the pipe line accounts the 1940 inspections appear to be the most reliable evidence being based on actual inspections of the property as of a recent date. The method of determination of the city's witness Benson assumes that what has happened in the past in regard to property since retired is the basis for assumption that the same experience will prevail in regard to the property now in service. Many factors that brought about foreshortened life of property since retired may not be operative to the same extent in bringing about retirement of property now in service. It further appears from the testimony of the witness Benson that he treated his determinations as an abstract accounting problem. Transfers of property from one account to another were treated as retirements of property. Sales of industrial metering equipment to industrial consumers were treated as retirements. The actual experience of the company in regard to salvage

realized on property retired was ignored and a judgment figure much lower than the actual experience of the company was substituted therefor. With the method of determination used by Mr. Benson, widely varying results may be obtained depending upon the amount of salvage value assumed. On the smaller accounts, Mr. Benson used very approximate methods and he gave them little attention.

The accrued depreciation determined by the Commission's engineers from the 1940 inspections is not substantially different from that arrived at by giving effect to additions and retirements of property and annual depreciation as used in the 1937 Cleveland case. The comparative results are as follows: 81.52 per cent on field lines as against 81.56 per cent; 76.47 per cent on transmission lines as against 83 per cent; 77.05 per cent on distribution lines as against 78.56 per cent. The greatest difference is on transmission lines and there is a slight difference on distribution lines. These comparisons indicate that the annual depreciation rates used in prior cases for transmission lines and distribution lines are too low and in the light of this test they are herein revised to the extent indicated by the 1940 inspections of pipe.

The pipe inspections were made in the year 1940 and in arriving at accrued depreciation as of June 30, 1939, the results arrived at in 1940 are modified on an annual depreciation rate to reflect less depreciation as of the earlier date. Valuations as of later dates give effect to depreciation since June 30, 1939. The resulting valuations as of the respective dates are set forth in Tables 1, 2, 3, 4, and 5.

Operating Revenues and Expenses

City and company are in agreement in regard to the revenues that the ordinance rates would produce and also as to the revenues the company has received under the collected rates which are the rates fixed in the 1937 Cleveland case. There is likewise agreement as to the method of allocation of revenues and expenses. Under this method all revenues from sale of industrial gas are credited against the cost of service, which method gives to residential and commercial users the benefit of all profits from industrial sales. With the increase of industrial sales incident to the war effort, this method of treatment has absorbed a large part of the increased operating costs of recent years.

As to operating expenses, there is little disagreement between the parties except as regards the payments made by East Ohio to the related Hope Natural Gas Company for gas delivered at the state line. Other minor items on the treatment of which the parties are not in agreement are cost of abandoning wells, depletion of leaseholds, depletion of well equipment, annuity payments, annual allowances for depreciation, and Federal income taxes.

Costs of Abandoning Wells

[16] The company, as above stated, charges costs of abandoning wells to operating expenses, whereas the city deducts this cost from gross salvage to arrive at a net salvage on wells which has the effect of charging well abandonments to the depreciation re-

serve. Consistent with the net salvage method which we have used in arriving at the present value of well equipment, the costs of abandoning wells are excluded from operating expenses.

Depletion of Leaseholds

The methods used by company and city for determination of this item are the same, but the difference in dollars allowed results from the lower value used by the city for leaseholds developed by the company. We have stated above the reasons for rejection of the method of valuation used by the city. The allowances for depletion of leaseholds shown in Table 8 hereto attached [omitted herein] are based on the included valuation of the leases and the basis for computation of depletion is the method on which company and city are in agreement.

Depletion of Well Equipment

The differences in the allowances for depletion of gas well equipment are due to the use of gross salvage method by the company and net salvage method by the city. We have used the net salvage method and therefore base our allowance set forth in Table 7 hereto attached [omitted herein] on that method.

Annuity Payments

[17] The company has provided retirement annuities for its employees since about 1918. Prior to 1931 these annuities were charged to Current Operating Expenses as and when they were incurred. In 1931 a trust fund was created providing for annuities to which fund the company made a contribution of about $3,000,000. This sum was paid from the company's surplus, was never charged to operating expenses, and in our judgment constituted a prepayment in part of its subsequent annuity expenses. As a result of a study made in 1941 the trustees of the annuity fund found, and so advised the company, that unless an additional sum of $1,163,243 were paid into the fund that they, the trustees, could pay out of the fund about 75 per cent of the amount to which East Ohio's employees were entitled upon their retirement. It is shown by the record that about 1,400 of the company's present approximately 2,000 employees will, if they continue in service, be entitled upon retirement to an annuity from this fund. The amount of the annuity will be determined by multiplying their average monthly earnings for a period of five years prior to their retirement by a percentage for each year of service up to January 1, 1936. It is apparent, therefore, that two procedures were available to the company by which to maintain the payment of the full amount of the retirement annuities as they arose; by paying the additional sum into the trust fund or by paying the remaining 25 per cent from company funds and charging the same to operating expenses. The company chose the former course and made a payment to the fund of the deficit found to exist in accordance with Federal income tax regulations proceeded to amortize said payment over a 10-year period at the annual rate of $116,324 beginning in 1941.

The claim of the company to the allowance of these amortized payments as operating expenses in the year 1941 and thereafter is controverted by the city and it is urged that they should be eliminated. The claim of the city is that this is a deficit which existed

as of 1931 and should therefore be disallowed and should not be charged against present consumers. No claim is asserted and there is nothing in the record which questions the wisdom of the company's action in making the lump sum payment. Neither is the propriety of the retirement annuities to employees questioned. It has frequently been held by courts and Commissions that payments for annuities by companies rendering a regulated public service are a proper part of the costs of rendering such service. This is affirmed, we believe, by the decision of the supreme court in the East Ohio-Akron Case ([1938] 133 Ohio St. 212, 228, 229, 22 PUR(NS) 489, 12 NE(2d) 765). Since it appears that the company could have properly charged to current operating expenses the deficiency between what an annuitant would have received from the annuity fund as it stood prior to the payment made by the company and which it now seeks to amortize, and the amount to which such annuitant was entitled, and in the absence of any claim or showing that the annuity trust fund arrangement is improper, we are disposed to allow the company's claim in this respect.

Annual Allowances for Depreciation of Property Other than Wells and Operated Leases.

In the prior 1931 and 1937 Cleveland cases a composite rate of 1.5 per cent of the depreciated value was allowed for annual depreciation. This composite was the weighted average of individual rates for production property, transmission property, distribution property, and general property. The accrued depreciation reported by the Commission's engineers from the 1940 pipe inspections indicates that the annual rates for transmission property and distribution property should be revised to increase the annual allowance for these classes of property.

The city witness Benson suggests an annual allowance of approximately 3.4 per cent of the depreciated value. This suggestion is based on his study as to service life of the various classes of property and subject to the same defects as his estimates of accrued depreciation. The witness for the company, Rhodes, suggests a rate of approximately 2 per cent. The company experience since the prior cases of 1931 and 1937 indicates that the annual rates for production property and general need no revision but that there should be a slight revision upward in the rates for transmission property and distribution property. We are making the indicated revisions herein in providing for annual depreciation at the following rates:

	On New Value	On Present Value
Production System	2.79%	3.46%
Transmission System	1.44	1.89
Cleveland Distribution Property	1.47	1.87
General Property	1.39	1.82
Liquefaction, Storage, and Regasification Plant	2.50	3.05
Composite for Cleveland Rate Base	1.55%	1.98%

The application of these rates and the annual allowances thus determined are set forth in Tables 9 and 9-A. [Tables 9 and 9-A omitted herein.]

Federal Income Taxes

[18] Initially there was no disagreement between the parties on the matter of Federal income taxes. Both agreed that had the ordinance rate

been in effect, East Ohio would have had to pay no Federal income tax assignable to its Cleveland business during the year ended June 30, 1940, and none, or substantially none, in the subsequent years. In determining results under the collected rate both parties used East Ohio's income taxes as actually paid in each year at the tax rates in effect in each year.

At the conclusion of the case the city and the Office of Price Administrator as intervener joined in urging that in none of the years considered should there be an allowance for Federal income taxes above the 19 per cent rate which was the combined normal and surtax rate for the year 1939. The combined normal and surtax rates for the respective years are as follows:

Year ended	
June 30, 1940	20.25%
Dec. 31, 1940	24.00
Dec. 31, 1941	31.00
Dec. 31, 1942	38.36
June 30, 1943	38.70
June 30, 1944	40.00

The company has paid no excess profits taxes during the period under consideration, therefore the matter of inclusion or exclusion of excess profits taxes is not at issue here.

In support of their contention the city and the Office of Price Administration cite the directive of the President of the United States dated April 8, 1943, and additional directives of various agencies of the executive branch of the Federal government. There is also cited the recent order of the Federal Power Commission in the case of Detroit v. Panhandle Eastern Pipe Line Co. (1942) 45 PUR(NS) 203, 219, 220. In the finding and order in that case the Federal Power Commission stated that under present war conditions utilities should not be allowed to increase rates in order to pass on to their consumers the present higher corporate tax rates. However, what the Federal Power Commission actually did was to reduce the rates of the Panhandle Company and in determining the rates which were fixed it based Federal income taxes for the year 1941 on the current rate of 31 per cent for that year and in testing the rate for a projected year allowed Federal income taxes at a rate of 45 per cent because at the time of the opinion it appeared that Congress would increase the corporate rate to that figure (45 PUR(NS) at pp. 217, 218).

Federal normal and surtaxes, exclusive of excess profits taxes, have been greatly increased during the present war and such taxes have attained such proportions as to constitute a substantial element of the cost of service. The treatment to be given an application to increase rates where a substantial portion of such increase will be absorbed in increased taxes resulting from increased income is a problem separate and apart from the matter at issue here. In the instant case the company is not seeking an increase in rates. We know of no case of record where a regulatory body has excluded Federal normal and surtaxes from the cost of service in the fixing of utility rates. In the case at hand for the year ended June 30, 1943, the difference between the use of the 1939 rate of 19 per cent and the average rate of 38.7 per cent in effect for that period would amount to about 2 per cent of return on the rate base. In the case of the appeal of the city of Akron from an order of

this Commission fixing rates for gas in that city (133 Ohio St 212, 226, 227, 22 PUR(NS) 489, 498, 12 NE (2d) 765) the supreme court of the state of Ohio stated:

"It can be said, however, that the rate of taxation in the years after 1935 was greater than in previous years. The Commission knew this fact at the time of its order, and to base its allowance for taxes upon a rate in past years which was lower than that which they knew would be assessed was arbitrary and unreasonable."

The war effort has resulted in great increases in the sales of gas for industrial purposes by the East Ohio Gas Company. As stated above, the parties in this case are in agreement in crediting the entire revenue from those sales to the cost of service and by this treatment the residential and commercial users receive the benefit from all profits from the industrial sales. To give to customers the benefit of profits from these increased sales which have resulted from the war effort and to deny the company the increased taxes that have resulted from the war would be inconsistent. In the determination of costs of service the Federal income taxes will be included at the rates actually paid by the company.

Payments for Gas Purchased from Hope Natural Gas Company

[19, 20] In all prior rate cases involving the purchase of gas by East Ohio from Hope this Commission has investigated the reasonableness of the contract prices between these affiliates. Prior to the enactment of the Natural Gas Act of June 21, 1938 (52 Stat. 821, 15 USCA § 717), Congress had not attempted to regulate interstate gas rates. Since the effective filing date under this act, Hope's rate schedule covering the price of natural gas sold to East Ohio has been on file with the Federal Power Commission. Payments by East Ohio to Hope during the period covered by this case have been made in conformity to these rate schedules.

In a recent case to which this Commission was a party, Ohio Pub. Utilities Commission v. United Fuel Gas Co. (1943) 317 US 456, 466–468, 87 L ed 396, 46 PUR(NS) 257, 263, 264, 63 S Ct 369, the Supreme Court of the United States said:

" . . . as to rates effective in the future we agree with the district court that the Natural Gas Act of 1938 governs. Congress by that act, the constitutionality and scope of which we canvassed at the last term in Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736, and Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co. (1942) 314 US 498, 86 L ed 371, 42 PUR(NS) 53, 62 S Ct 384, preëmpted the regulatory powers over the transportation and sale of natural gas in interstate commerce. . . .

"No changes in such schedules can be made without notice to the Power Commission. That Commission, on its own motion, can inquire into the lawfulness of such rates; if the public interest so requires, rates found to be just and reasonable may be substituted. It is indisputable, therefore, that if the Ohio Commission today made the orders complained of in this suit, it would be intruding in a domain reserved to the Federal regula-

tory body. The power to fix rates for natural gas transported and sold in interstate commerce has been entrusted solely to the Federal Power Commission."

Prior to July 15, 1942, the scheduled rate provided an average price of about 36½ cents per thousand cubic feet for Hope's sales to East Ohio. Effective July 15, 1942, the Federal Power Commission ordered a reduction in this rate to an average of 29½ cents per thousand cubic feet pursuant to its Opinion No. 76 dated May 26, 1942 (Cleveland and Akron v. Hope Nat. Gas Co. 44 PUR(NS) 1). The schedule effecting this reduction appears in the record as C.X. 50. In January, 1944, the United States Supreme Court affirmed the Commission's order in Federal Power Commission v. Hope Nat. Gas Co. 320 US 591, 88 L ed 276, 51 PUR(NS) 193, 64 S Ct 281. The entire record of these proceedings was offered in evidence herein and was admitted.

The city and company are agreed that the average rate of 29½ cents per thousand cubic feet is proper for the period beginning July 12, 1942.

The city contends that the Commission should not allow the filed schedule average rate of 36½ cents per thousand cubic feet for the period prior to July 12, 1942, and urges us to allow East Ohio for gas purchased from Hope during this period an amount which we should find to be reasonable. It bases its claim upon a portion of the Federal Power Commission's Opinion No. 76 above referred to, wherein that Commission found that the 36½-cent rate was unlawful under the Natural Gas Act since June 30, 1939.

A considerable portion of the record is devoted to arguments upon this subject, and we have had the help of exhaustive briefs. If we were permitted we would naturally desire to give such effect to the finding of the Federal Power Commission as our inquiries justified. However, we entertain no doubt that we must allow the amounts of the actual payments which East Ohio has made to Hope for gas purchased prior to July 15, 1942. Under the terms of the Natural Gas Act it is crystal clear that Hope could not charge, or that East Ohio could not pay, without the approval of the Power Commission, any other amount.

Concerning the findings of the Federal Power Commission with respect to the lawfulness of Hope's rates prior to July 12, 1942, the fourth circuit court of appeals in Hope Nat. Gas Co. v. Federal Power Commission (1943) 47 PUR(NS) 129, 161, 134 F(2d) 287, 310, said:

"As the Commission itself says, it was not given authority to fix rates for the past or to award reparations on account of past rates. If it was not given the power to fix past rates, or award reparations based upon their unreasonableness, it certainly was given no power to do the same thing indirectly by making findings of fact as to past rates to be given effect in rate proceedings before state Commissions."

The supreme court of Ohio in the 1937 Cleveland Case, 137 Ohio St 225, 253, 254, 35 PUR(NS) 158, 176, 28 NE(2d) 599, said:

"Any river rate the Federal Power Commission might designate would be of an entirely prospective nature

and would consequently be of no benefit or controlling force in the present proceedings."

In this case we have given effect to the rate fixed by the Power Commission, the only rate which it has lawfully fixed, and have likewise given effect to the filed schedule rate over which only the Power Commission has jurisdiction. If the Power Commission itself has no authority to compel a gas company expressly subject to its jurisdiction to repay to its consumer companies any difference between its filed schedule rate and a lower rate retroactively found by it to be the lawful rate, then assuredly this Commission has no statutory authority under the Natural Gas Act, or otherwise, to compel the customer company to pay to its consumers the difference which it has never received back from the interstate company irrespective of their affiliation.

In conclusion it may be observed that in 1938 the city of Cleveland requested the Federal Power Commission to make an investigation as to the reasonableness of the river rate. Had the Power Commission completed its investigation and set the rate, we would now be in a position to conform our findings to the city's request. Instead, the Power Commission did not see fit to set a rate until June, 1942. Its failure to do so does not create jurisdiction in this Commission to do that which it now indicates it should have done.

Rate of Return

[21, 22] The company has presented the testimony and exhibits of two witnesses, Coffman and Brown, relative to investors' appraisal of risks for the respective classes of utilities. The witness Coffman submitted statistical analyses based on security prices and earnings for the years 1937 to 1941. The witness Brown submitted testimony relative to over-all cost of money based on financing costs for certain natural gas utilities with varying proportions of bonds, preferred and common stocks, also for financing with all common stock. On the basis of this testimony the company sets forth that an over-all return of 7 to 7½ per cent would be required to attract the required capital. The company witness testified that whereas there had been a decline in yields required on high grade bonds in recent years this had been accompanied by an increase in the yields required on equity, or common stock money.

The city submitted the testimony of its witness Herman in support of its contention that sufficient capital to finance such a corporation could be obtained at an average cost of 6 per cent. The witness Herman selected three gas distributing companies and using 1940 yields on bonds and preferred stocks and the average yields on common stocks for the years 1937 to 1939, the yield on common stocks being based on the ratio of earnings to market price. In C.X. 1 the witness gave equal weight to the earnings on common stock in each of the years 1937, 1938, and 1939. In a supplemental Exhibit C.X. 1-A he gave a weight of 1 to the year 1937, a weight of 2 to the year 1938, a weight of 3 to the year 1939, and a weight of 4 to the year 1940. This method, according to the witness, gave a cost

of money that averaged 5.98 per cent.

Considering the testimony submitted, it appears that the more logical method of arriving at cost of capital would be a coincident yield on bond, preferred stock, and common stock money. The record in the case and common knowledge in financial circles is that whereas there has been a decline in the cost of bond money, there has been a rise in the cost of capital for common stock investment. Had the witness Herman used coincidental money rates for bonds, preferred and common stocks, the average cost would have been 6½ per cent instead of 6 per cent. See Record, Herman, Cross Ex. pp 624–626. On consideration of the exhibits and testimony submitted, we conclude that a fair and reasonable return for East Ohio during the period here under consideration is 6½ per cent on the value of the property used and useful in furnishing the service.

Test of the Reasonableness of the Ordinance Rate

In Table 10 there is shown the return provided by the ordinance rates for the years ending June 30, 1940, and June 30, 1941, with the costs of service set forth as included in this finding. The test shows that for the year ended June 30, 1940, the rates set forth in the ordinance provide a return of 1.73 per cent and for the year ended June 30, 1941, a return of 1.29 per cent. This is insufficient to provide a fair return on the value of the property used in furnishing the service and it therefore becomes the duty of this Commission to substitute therefor an adequate rate.

Determination of a Reasonable Substitute Rate

There is set forth in Table 11 [Table 11 omitted herein], the return that East Ohio has earned under the collected rate for the period June 30, 1939, to June 30, 1944, upon the valuations of the property as of the respective years, with operating expenses included as stated above. The table shows the actual experience of the company for the four years ended June 30, 1943. In the year ended June 30, 1944, the revenues and expenses are estimated for the last several months. As set forth in the table, the returns for the respective years were as follows:

Year ended June 30, 1940	5.92%
Year ended June 30, 1941	5.20%
Year ended June 30, 1942	4.87%
Year ended June 30, 1943	8.00%
Year ended June 30, 1944	7.10%

Gas purchased from Hope Natural Gas Company is included at the 36½-cent contract rate for the first three years and after June 30, 1942, at the rate of 29½ cents fixed by the Federal Power Commission. During the year ended June 30, 1944, the East Ohio Gas Company purchased substantial quantities of gas from Panhandle Eastern Pipe Line Company. The purchase contract provided for a tentative rate of 27.75 cents per thousand cubic feet, but provided that such price was to be retroactively adjusted in the event that the proceedings before the Federal Power Commission in Docket Nos. G-200 and G-207 ([1942] 45 PUR(NS) 203) resulted in a reduction in the rate for firm sales of gas to utilities in Ohio and Michigan. The decision of the Federal Power Commission in this proceeding reduced

the rate to 19.82 cents per thousand cubic feet. The rate reduction order in these proceedings has been affirmed by the United States circuit court of appeals for the eighth circuit ([1944] 54 PUR(NS) 26–40, 143 F(2d) 488). We have therefore included gas purchased from Panhandle Eastern Pipe Line Company during the year 1944 at the lower rate of 19.82 cents per thousand cubic feet.

The above summary shows that during the period June 30, 1939, to June 30, 1942, the collected rates furnished a return which was less than what we have held to be a fair return but that in the period June 30, 1942, to June 30, 1944, the collected rates provided a return in excess of what the record in this case indicates to be a fair return. This difference is largely attributable to the lower price for gas purchased from Hope during the period June 30, 1942, to June 30, 1944.

In Table 12-A are set forth the net city gate cost for gas delivered at the city gate of Cleveland for the years ended June 30, 1943, and June 30, 1944, which city gate costs are 33.22 cents and 34.90 cents per thousand cubic feet respectively, or an average of 34.08 cents per thousand cubic feet. Table 12 shows the cost of domestic and commercial gas to users in the city of Cleveland for the years ended June 30, 1943, and June 30, 1944, based on the city gate costs shown in Table 12-A. These costs are 61.50 cents and 63.98 cents respectively, an average of 62.77 cents per thousand cubic feet. In substituting rates for the inadequate rates set forth in the ordinance inasmuch as the company has stated that it does not seek an increase in rates, there will be substituted for the ordinance rates for domestic and commercial service for the period June 30, 1939, to June 30, 1942, the rates which have been collected by the company, namely:

For the first 400 cubic feet, or less, or none, measured through any one meter, per month, 80¢;
For all over 400 cubic feet, per month measured through such meter, per month, 5½¢ per one hundred cubic feet;
If the bill is not paid within ten days after the maturity established therefor, 5¢ additional per thousand cubic feet per month;
and include the charges in respect of turning on gas and for setting meters as specified in said Ordinances and said Schedule P.U.C.O. No. 8.

For the period July 1, 1942, to date of this order, there will be substituted rates for domestic and commercial service which will provide approximately 62.77 cents per thousand cubic feet which is the average cost of service per thousand cubic feet for the period June 30, 1942, to June 30, 1944, set forth in Table 12 [omitted herein]. The following schedule of rates will approximately provide the 62.77 cents cost for gas for the period:

For the first 1,000 cubic feet, or less, or none, measured through any one meter, per month, 89¢;
For all over 1,000 cubic feet, measured through such meter, per month, 5½¢ per one hundred cubic feet;
If the bill is not paid within ten days after the maturity established therefor, 5¢ additional per thousand cubic feet per month;
and include the charges in respect of turning on gas and for setting meters as specified in said Ordinances and said Schedules P.U.C.O. No. 8.

which rates and charges for the period July 1, 1942, to date of this order are hereinafter referred to as the "reduced rate."

Rates for the Future

As has been stated above, the East Ohio Gas Company received gas from Panhandle Eastern Pipe Line Com-

pany in the year 1944 under terms of a certain contract, the rate provisions of which have been previously described. The deliveries under this contract during the year ended June 30, 1944, were approximately 10,000,000 thousand cubic feet. Under terms of the contract which provide for deliveries of 50,000 thousand cubic feet per day the deliveries in succeeding years will amount to about 18,000,000 thousand cubic feet per year. The Federal Power Commission has fixed the rate for this gas at 19.82 cents per thousand cubic feet and this finding has been sustained by the United States circuit court of appeals of the eighth circuit ([1944] 54 PUR(NS) 26–40, 143 F(2d) 488). Any determination of rates for the future must take into consideration the effect on the cost of service of a full year's delivery of 18,000,000 thousand cubic feet from Panhandle.

In Tables 13 and 13-A are set forth the costs of service for the year ended June 30, 1944, but adjusted to include an additional 8,000,000 thousand cubic feet of gas from Panhandle at a price of 19.8 cents per thousand cubic feet in lieu of a like amount of gas purchased from Hope at a price of 29½ cents per thousand cubic feet. This adjustment to give effect to a full year's delivery of gas by Panhandle produces a rate of 61.91 cents per thousand cubic feet for domestic and commercial gas.

[23] The schedule of rates for the East Ohio Gas Company for gas service in the city of Cleveland provides for charges for meter setting and turning on gas. The ordinance appealed from also provides for these charges. Such charges are not provided for in the schedules of the East Ohio Gas Company for other than Cleveland territory and such charges are rare among other utilities. These charges within the city of Cleveland result in revenues of approximately $44,000 per year.

It is our judgment that a rate structure which provides for such charges is not a desirable one and in fixing a rate for the future we will provide a rate which will meet the cost of service without the imposition of such charges. The following schedule, to be charged for the two years following the effective date of this order, will provide an average rate of approximately 62.36 cents per thousand cubic feet which is the average cost of service as set forth in Tables 14 and 14-A [tables omitted herein] which give effect to a full year of gas from Panhandle and the elimination of meter set and turn on charges:

For the first 1,000 cubic feet or less, or none, measured through any one meter per month—90¢;
For all over 1,000 cubic feet, measured through such meter per month, 5½¢ per one hundred cubic feet;
If the bill is not paid within ten days after the maturity established therefor, 3¢ additional per thousand cubic feet per month;

which rates and charges to be collected from the effective date of this order and for two years thereafter are hereinafter referred to as the "new rate."

Office of Price Administration

[24] The Director of Economic Stabilization through the Office of Price Administration contends that "the matters involved present a question to be decided according to criteria prescribed by the Commission in the act of October 2, 1942, and that adjustments in the prevailing rates or charges of The East Ohio Gas Com-

pany . . . should be made to the extent 'necessary to aid in the effective prosecution of the war or to correct gross inequities.' The application of these criteria in this case means simply that no increase above the ordinance rates prescribed by the Cleveland authorities should be granted to the company unless clearly necessary to secure the rendition of satisfactory service by this utility. It means also that reductions in the presently effective rates must be made to a level which will produce a rate of return proper under present economic conditions when viewed in the light of the economic stabilization program, and which will aid in the effort to maintain living costs at the September 15, 1942, level. This, of course, does not mean a return which would be normal and proper under peaceful prewar conditions which no longer exist." (Brief of Director of Economic Stabilization, filed July 12, 1943, pp 4–5).

On page 6 of this brief it is stated:

"As we have said in our oral argument, we recognize that this Commission must act pursuant to and in accordance with the statutory authority given to it under the laws of the state of Ohio. But as we have also said, it must also discharge the duty prescribed by the Emergency Price Control Act of 1942 and the amendment thereto of October 2, 1942."

With respect to the several claims of this intervener we think it sufficient to say that in the exercise of our statutory authority and in the manner directed by the laws of Ohio, we have found that the rate prescribed by the ordinance herein involved is improper and that in arriving at the rate which we have fixed we have given due regard and consideration to the criteria prescribed by Congress. The rate thus fixed is substantially lower than the rate which was collected on September 15, 1942.

We find, as aforesaid, that the ordinance rates herein complained of and appealed from are insufficient to provide appellant, The East Ohio Gas Company, a fair return on the property used and useful in furnishing the service. For the period June 30, 1939, to June 30, 1942, there will be substituted therefor the collected rates. For the period July 1, 1942, to the date of this order there will be fixed the reduced rates herein found reasonable for the period, and The East Ohio Gas Company required to refund the difference between the reduced rates and the collected rate. From the effective date of this order and for two years thereafter the new rates herein found reasonable after giving effect to a full year of delivery of gas from Panhandle Eastern Pipe Line Company and the elimination of meter set and turn on charges will be fixed.

An order will be drawn in accordance with these findings.

[Tables omitted.]

Finding and Order

This day after full hearing and argument by counsel, this consolidated proceeding came on for final consideration upon the complaint and appeal by The East Ohio Gas Company from Ordinance No. 644-A-39 passed May 22, 1939, by the council of the city of Cleveland, Ohio, to regulate the rates and prices to be charged by The East Ohio Gas Company for natural gas service furnished in the city of Cleveland, Ohio, for the period of six

months extending from the effective date of such Ordinance, July 1, 1939, to December 31, 1939; upon the complaint and appeal of The East Ohio Gas Company from Ordinance No. 1776–39 passed November 20, 1939 by the council of the city of Cleveland, Ohio, to regulate the rates and prices to be charged by The East Ohio Gas Company for natural gas service furnished in the city of Cleveland, Ohio, for the period of six months extending from the effective date of such Ordinance, January 1, 1940, to July 1, 1940; upon the complaint and appeal by The East Ohio Gas Company from Ordinance No. 898–40 passed May 20, 1940, by the council of the city of Cleveland, Ohio, to regulate the rates and prices to be charged by The East Ohio Gas Company for natural gas service furnished in the city of Cleveland, Ohio, for the period of six months extending from the effective date of such Ordinance, June 30, 1940, to January 1, 1941; upon the testimony and exhibits offered and introduced in evidence upon such hearing; and upon the arguments, printed and oral, of counsel.

The Commission, being fully advised in the premises, and having this day duly made and filed in writing its findings as to the facts concerning which evidence has been presented herein, which findings, including the tables appended thereto, are hereby made a part of this order by adoption as fully as if the same were here set forth in their entirety, coming first to value the property of The East Ohio Gas Company, used and useful for the convenience of the public in the furnishing of natural gas for public and private consumption in the city of Cleveland, Ohio, and after considering the inventories of said property filed herein by The East Ohio Gas Company and by the city of Cleveland, Ohio, the evidence and exhibits, finds and ascertains the value of the several kinds and classes of property and of all of said property of The East Ohio Gas Company allocated to the city of Cleveland, Ohio, used and useful for the convenience of the public in the furnishing of natural gas service for public and private consumption in the city of Cleveland, Ohio, to be the sum of $30,645,442 as of June 30, 1939, the sum of $30,951,313 as of June 30, 1940, the sum of $34,017,815 as of June 30, 1941, the sum of $35,237,847 as of December 31, 1942, and the sum of $38,046,621 as of December 31, 1943, as respectively and more fully set forth in Tables 1 to 5, inclusive, appended to said findings of fact and heretofore made a part of this order.

To which finding of the Commission the parties hereto, The East Ohio Gas Company and the city of Cleveland, Ohio, each then excepted, here now except and their exceptions here are noted of record.

And the Commission coming now to consider the complaints and appeals by The East Ohio Gas Company from the aforesaid ordinances, and having caused an appraisement to be made, and having ascertained and hereinbefore determined and fixed the value of all of the property of The East Ohio Gas Company allocated to the city of Cleveland, Ohio, actually used and useful for the convenience of the public in the furnishing of natural gas service for public and private consumption in the city of Cleveland, Ohio, exclud-

ing therefrom the value of any franchise or the right to own, operate or enjoy the same, in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration for the grant of such franchise or right, and exclusive of any value added thereto by reason of a monopoly or merger, and having given consideration to the necessity for making reservation from the income for surplus, depreciation, and contingencies, and having taken into consideration all other matters which were deemed proper, the Commission further finds:

That the reasonable annual charges to be allowed The East Ohio Gas Company for the depletion and replacing of its wasting assets, wells and operated leaseholds, are as set forth in Tables 7 and 8 appended to said findings of fact and heretofore made a part of this order;

That the reasonable and proper annual charges to be allowed The East Ohio Gas Company for the depreciation of its properties, other than said wasting assets, so used in the furnishing of such service in the city of Cleveland, Ohio, are as set forth in Tables 9 and 9-A appended to said findings of fact and heretofore made a part of this order;

That inclusive of the aforesaid allowances for annual depletion and depreciation charges the reasonable and proper operating expenses of The East Ohio Gas Company for the furnishing of natural gas service in the city of Cleveland, Ohio for public and private consumption are respectively as set forth in Tables 6, 12, 12-A, 13, 13-A, 14 and 14-A appended to said findings of fact and heretofore made a part of this order;

That a reasonable annal rate of return to be allowed The East Ohio Gas Company for the furnishing of natural gas in the city of Cleveland, Ohio, is 6½ per cent of the aforesaid value of its property used and useful for the furnishing of natural gas service in the city of Cleveland, Ohio;

That the gross and net revenues to be derived by The East Ohio Gas Company for the furnishing of natural gas service for public and private consumption in the city of Cleveland, Ohio, at the rates, prices and charges set forth in and prescribed by said Ordinance No. 644-A-39, as well as by said Ordinances Nos. 1776–39 and 898–40, herein complained of and appealed from will be insufficient to yield The East Ohio Gas Company a reasonable compensation for such service;

That The East Ohio Gas Company has, therefore, proved that the rates, prices and charges so fixed by said Ordinance No. 644-A-39, as well as by said Ordinances Nos. 1776–39 and 898–40, are and will be unjust, unreasonable, and insufficient to yield a reasonable compensation to it for the natural gas furnished by it for public and private consumption in the city of Cleveland, Ohio and that the rate provisions of said Ordinances Nos. 1776–39 and 898–40 are therefore of no legal effect;

That the rate structure of said ordinances herein complained of and appealed from and the penalty provided by § 3 of said ordinances to the effect that "the company's returns under the provisions of this ordinance shall be discounted 2 per cent" for variations

in heat content or for pressures below standards set forth in the ordinances, are unfair and unreasonable, and the provisions that in the event of inadequacies of its gas supply the company must apportion its available supply among the municipalities which the company is now under obligation to furnish gas, are also unfair and unreasonable and in violation of § 614–15 of the General Code of Ohio which prohibits unreasonable preferences to any locality, and the provisions of said ordinances purporting to give to the city of Cleveland, Ohio, the privilege of terminating the right to operate further under said ordinances in the event there is any violation of the provisions just referred to are in conflict with the provisions of §§ 504–2 and 504–3 of the General Code of Ohio, and all of said provisions should be and hereby are stricken and abrogated;

That the rates and charges fixed and prescribed by said Ordinance No. 644-A-39, as well as by said Ordinances Nos. 1776–39 and 898–40, to wit:

For the first 2,000 cubic feet, or any portion thereof, measured through any one meter per month, 48 cents per thousand cubic feet;
For all over 2,000 cubic feet per month, but not to exceed 10,000 cubic feet measured through such meter, per month, 55 cents per thousand cubic feet;
For all over 10,000 cubic feet measured through such meter, per month, 55 cents per thousand cubic feet.
Provided, however, that the foregoing charge in no case shall be less than 75 cents per meter, per month.

are unjust and unreasonable and ought not to be ratified or confirmed, and that just and reasonable charges should be substituted therefor; that the just and reasonable rates and charges for natural gas furnished by The East Ohio Gas Company for public and private consumption in the city of Cleveland, Ohio, to domestic and commercial consumers are:

(a) For the period June 30, 1939, to June 30, 1942:

The rates and charges prescribed by the Commission for natural gas supplied to such consumers in the city of Cleveland, Ohio by its orders of January 10 and January 20, 1939 in Proceeding No. 10,202 (27 PUR (NS) 387) before the Commission and collected by The East Ohio Gas Company since June 30, 1939, which rates are hereinafter referred to as the "collected rate" and which rates are as set forth in The East Ohio Gas Company's schedule P.U.C.O. No. 8 on file with the Commission and appearing in the record herein as Company Exhibit No. 11, page 3, and which rates are as follows, to wit:

For the first 400 cubic feet, or less, or none, measured through any one meter, per month, 30 cents;
For all over 400 cubic feet, per month measured through such meter, per month, 5½ cents per one hundred cubic feet;
If the bill is not paid within ten days after the maturity established therefor, 5 cents additional per thousand cubic feet per month;

and include the charges in respect of turning on gas and for setting meters as specified in said Ordinances and said schedule P.U.C.O. No. 8.

(b) For the period July 1, 1942, to November 20, 1944:

For the first 1,000 cubic feet, or less, or none, measured through any one meter, per month, 89 cents;
For all over 1,000 cubic feet, measured through such meter, per month, 5½ cents per one hundred cubic feet;
If the bill is not paid within ten days after the maturity established therefor, 5 cents additional per thousand cubic feet per month;

and include the charges in respect of turning on gas and for setting

meters as specified in said ordinances and said schedule P.U.C.O. No. 8; which rates and charges for the period July 1, 1942, to November 20, 1944, are hereinafter referred to as the "reduced rate."

(c) For the period November 21, 1944, to November 20, 1946:

For the first 1,000 cubic feet, or less, or none, measured through any one meter, per month, 90 cents;
For all over 1,000 cubic feet, measured through such meter, per month, 5½ cents per one hundred cubic feet;
If the bill is not paid within ten days after the maturity established therefor, 3 cents additional per thousand cubic feet per month;
But the charges in respect of turning on gas and for setting meters as specified in said ordinances and said schedule, P.U.C.O. No. 8, are eliminated.
Which rates and charges for the said period of two years, November 21, 1944, to November 20, 1946, are hereinafter referred to as the "new rate."

That the just and reasonable rates and charges for regular industrial gas furnished by The East Ohio Gas Company for public and private consumption in the city of Cleveland, Ohio, for the period from June 30, 1939, to November 20, 1946, are as set forth in The East Ohio Gas Company's schedule of rates for "Gas Supplied for Industrial Purposes" in the city of Cleveland, Ohio, as on file with the Commission and appearing in the record herein as Company Exhibit No. 11, page 7, and entitled "P.U.C.O. Supplement No. 1 to P.U.C.O. No. 8" and hereby made a part of this entry by adoption as fully as if the same were here set forth in its entirety;

That the just and reasonable rates and charges for special industrial gas furnished by The East Ohio Gas Company for public and private consumption in the city of Cleveland, Ohio, for the period from June 30, 1939 to January 1, 1942, are as set forth in The East Ohio Gas Company's schedule of rates for "Gas Supplied for Industrial Purposes and Available in All Territories Served" as on file with the Commission during said period and appearing in the record herein as Company Exhibit No. 11, page 11, and entitled "P.U.C.O. No. 14, Superseding P.U.C.O. No. 13" and hereby made a part of this entry by adoption as fully as if the same were here set forth in its entirety, and for the period from January 1, 1942, to November 20, 1946, are as set forth in The East Ohio Gas Company's schedule of rates for "Gas Supplied for Industrial Purposes and Available in All Territories Served" presently on file with the Commission and appearing in the record herein as Company Exhibit No. 11-A and entitled "P.U.C.O. No. 15, Superseding P.U.C.O. No 14" and hereby made a part of this entry by adoption as fully as if the same were here set forth in its entirety; and

That the gross and net revenues derived and to be derived by The East Ohio Gas Company for the furnishing of natural gas service for public and private consumption in the city of Cleveland, Ohio, at said rates, prices and charges found by the Commission to be reasonable will be sufficient to yield to The East Ohio Gas Company a reasonable compensation for such service.

It is, therefore,

Ordered, that the rates, prices, and charges hereinbefore found and determined by the Commission to be just and reasonable for the furnishing of natural gas service for public and private consumption to domestic and commercial consumers in the city of

Cleveland, Ohio, be and hereby they are substituted for the rates fixed by said Ordinance No. 644-A-39, as well as by said Ordinances Nos. 1776–39 and 898–40, which rates the Commission has herein found to be unjust and unreasonable, the collected rate being so substituted for the period June 30, 1939, to July 1, 1942, and the reduced rate being so substituted for the period July 1, 1942, to November 20, 1944, and the new rate being so substituted for the period November 21, 1944 to November 20, 1946, and that the rates, prices, and charges hereinbefore found and determined by the Commission to be just and reasonable for the furnishing of natural gas service for public and private consumption to industrial consumers in the city of Cleveland, Ohio, be and hereby they are substituted for the rates applicable to said service, if any, fixed by said Ordinance No. 644-A-39, as well as by said Ordinances Nos. 1776–39 and 898–40.

And the Commission having made inquiry and investigation with respect to the ability of The East Ohio Gas Company to furnish natural gas for public and private consumption in the city of Cleveland, Ohio, for the period from June 30, 1939, to November 20, 1946, finds that The East Ohio Gas Company will be able to furnish its said product in said city during said period. It is, therefore, further

Ordered, that the respective rates, prices and charges for natural gas furnished by The East Ohio Gas Company to the citizens and private consumers and to be furnished to the public buildings, grounds, streets, lanes, alleys, avenues, and market places of the city of Cleveland, Ohio, for public and private consumption, which the Commission has herein found to be just and reasonable, shall be and remain in force and effect as above set forth during the period from and after the effective date of said Ordinance No. 644-A-39, herein complained of and appealed from, to wit, from June 30, 1939, to November 20, 1946, for the furnishing of such service, and The East Ohio Gas Company be and hereby it is notified, directed, and required to furnish its said product to the said consumers thereof for public and private usage in the city of Cleveland, Ohio, for said period.

And it appears further that under this finding and order The East Ohio Gas Company will be required to refund to its domestic and commercial consumers in the city of Cleveland, Ohio, for the period July 1, 1942, to the effective date of this order the difference between the rates and charges it has been collecting and the reduced rate. It is, therefore, further

Ordered, that to the extent The East Ohio Gas Company has collected from any domestic or commercial consumer in the city of Cleveland, Ohio, a rate or charge for domestic or commercial natural gas or domestic or commercial natural gas service furnished during the period July 1, 1942, to the effective date of this order other than the reduced rate hereinbefore specified The East Ohio Gas Company shall, and it is hereby notified, directed and required to, refund to such consumers in cash and/or credit upon any existing indebtedness of the consumer to The East Ohio Gas Company any net excess the consumer has

paid for such natural gas or natural gas service so furnished above the amount due it therefor at said reduced rate. It is further

Ordered, that as soon as possible and in no event later than one hundred and twenty days from the effective date of this order, The East Ohio Gas Company shall, and it is hereby notified, directed and required to, file with the Commission a detailed report of its refunds made pursuant to this order. It is further

Ordered, that jurisdiction in these proceedings be retained for the receipt of such report, the making of such audits and such other reports and orders as may be proper in the premises, including discharge of the undertakings heretofore filed herein, and that in all other respects these proceedings be, and hereby the same are, terminated. It is further

Ordered, that a copy of this order and said findings of fact of the Commission in this proceeding forthwith be served upon The East Ohio Gas Company and upon the mayor of the city of Cleveland, Ohio. It is further

Ordered, that this order become effective immediately.

To which orders of the Commission, The East Ohio Gas Company and the City of Cleveland, Ohio, each then excepted, here now except, and their exceptions here are noted of record.

COLORADO PUBLIC UTILITIES COMMISSION

Re Highland Utilities Company

Applications Nos. 1127-A, 1319-A, 1354-A, 1355-A, 1399-A, 1400-A, 1895-A, 1897-A, 1944-A, Decision No. 22666
September 1, 1944

APPLICATION *for authority to sell public utility properties to coöperative association; motion to dismiss application denied and authority granted.*

Consolidation, merger, and sale, § 62 — Scope of proceeding —Sale to coöperative — Federal loan.

1. The power of a nonprofit coöperative association to buy public utility properties and the power of the Administrator of the Rural Electrification Administration to make a loan to the association for the purchase of the properties may not be settled by the state Commission on an application for authority to transfer utility properties to the association. p. 107.

Consolidation, merger, and sale, § 62 — Jurisdiction of Commission — Sale to coöperative — Service to nonmembers.

2. The right of a nonprofit coöperative association to serve nonmembers and to operate an ice plant and waterworks system may not be decided by the state Commission on an application for authority to transfer utility properties to the association, p. 107.

Consolidation, merger, and sale, § 2 — Right of owner to sell.

3. A property owner generally should be allowed to sell unless this would be detrimental to the public, p. 107.

Consolidation, merger, and sale, § 21.1 — Transfer to coöperative association — Public benefit.

4. The sale of public utility properties to a nonprofit coöperative association should be authorized, as being in the public interest, where the transferee is financially able and qualified to take over and operate the properties, where it does not appear that the management of the transferee is not competent and efficient, or that service to be furnished to the utility's customers would be less satisfactory than service now furnished by the public utility company, where none of the public utility customers have objected to the sale, and where extensions in rural areas are contemplated in the event the transfer should be allowed, so that many farms without essential electric service, and without hope of service from the existing public utility company, would be connected and receive electrical energy, p. 107.

Public utilities, § 130 — Coöperative association — Service to nonmembers.

Discussion of the right of a nonprofit coöperative association to act as a public utility in one instance and in another to act as a nonutility as affecting authorization of the sale of public utility properties to the association, p. 108.

APPEARANCES: Lowell D. Hunt, Denver, for applicant; L. L. Bean, St. Louis, and Wilkie Ham, Lamar, for Southeast Colorado Power Association; Paul W. Lee, and Charles J. Kelly, Denver, and Arthur C. Gordon, Lamar, for protestants.

By the COMMISSION: Highland Utilities Company, applicant herein, under certificates of public convenience and necessity issued by this Commission, operates and maintains generating plants for the production of electrical energy located in the town of Eads, Kiowa county, Colorado, and Springfield, Baca county, Colorado, and lines for the transmission and distribution thereof in certain rural areas and municipalities, including, among others, Springfield, Eads, Walsh, Two Buttes, Vilas, and Pritchett, in said counties. It also is the owner of a water system consisting of wells, pumping plants, mains, and other facilities for the distribution of water for domestic, manufacturing, and other purposes in the town of Eads, Colorado, and an ice plant in Springfield, Colorado. Besides its certificates of public convenience and necessity, it owns certain franchise rights granted by the municipalities it serves to it, or its predecessors in interest, to operate said electric and water service systems in said towns. The certificates and operating rights are particularly described in paragraphs numbered III and IV of the application filed herein, said application being one to sell all the applicant's electrical and utility properties in the counties of Kiowa and Baca which it owns, holds, and uses for the purpose of serving the citizens of said counties with electrical energy, its water utility, and ice manufacturing plant, all of said property, including plants, transmission lines, distribution systems, certificates, franchises, real estate, etc., being particu-

larly described in said paragraphs III and IV of the application herein, to the Southeast Colorado Power Association, a nonprofit, coöperative association incorporated under the provisions of Chap 52, Session Laws of Colorado, 1913, which association is financed and supervised by Rural Electrification Administration, organized by Act of Congress. The terms of sale and purchase are set forth in copies of written agreement between the parties, deed and bill of sale attached to the application as Exhibit "A", which by reference is made a part hereof.

Copies of said application, which was filed April 21, 1944, were duly served upon the boards of county commissioners of Kiowa and Baca counties, and the towns of Springfield, Pritchett, Two Buttes, Walsh, and Eads. The matter, after several continuances, was heard in Denver on June 22, 1944, and taken under advisement.

On May 8, 1944, the town of Eads filed protest in writing, objecting to the sale, but on June 15, 1944, withdrew the protest. On June 10, 1944, a written protest was filed by John W. Davis, J. E. Pottorff, F. D. Wilson and A. L. Preston, Darrell Perdue, Chris Jensen, of Lamar, for themselves and for others similarly situated, by their attorneys, William A. Bryans III, Charles J. Kelly, and Arthur C. Gordon. Among other things, it was alleged that they are members of Southeast Colorado Power Association and consumers of electrical energy purchased from said association, a coöperative; that by the terms of the statute under which it is incorporated, and by the provisions of its articles, "it may only do business with its members or shareholders and cannot serve the public generally"; that the proposed purchase aforesaid is illegal and contrary to provisions of "Rural Electrification Act of 1936" because funds to purchase are to be borrowed from Rural Electrification Administration, and the administrator cannot make loans to furnish energy to rural areas receiving central station service, which service is received by all towns and rural areas involved; that said association, through its officers, but without authorization by its members, now serve, and propose to serve, nonmembers of the association with electricity and propose to operate a waterworks system at Eads and an ice plant at Springfield, and to perform other ultra vires acts which threaten the financial security of the association and property rights of the protestants as members of said association; that said sale and purchase would not operate for the public convenience and necessity, would be in violation of Public Utilities Act of the state of Colorado, and contrary to "Rural Electrification Act of 1936." They asked that the application be dismissed.

On June 22, 1944, when the matter was called for hearing in Denver, Mr. A. C. Gordon, counsel for protestants aforenamed, stated that he had just been informed by Mr. Hunt, attorney for Highland Utilities Company, that "he had a signed statement from all protestants that we represent that they had withdrawn their protest." He asked for time to investigate. Mr. Hunt agreed and a recess was taken. Following the recess, Mr. Gordon stated he had been able to contact only one of the protestants by tele-

phone, who confirmed statement as to his withdrawal, but after some discussion, authorized him to continue to represent him; that after consultation, he and his associate counsel, Paul W. Lee and Charles J. Kelly, desired to withdraw protest and asked the Commission's permission to appear as friends of the Commission. Mr. Ham, Southeast Colorado Power Association's attorney, objected and read letters from protestants stating that they had been misinformed and did not favor the complaint. Mr. Gordon thereupon produced his original written authorities to appear for them at the hearing "to develop all the facts in this matter."

The Commission, on account of the absence of protestants and uncertainty as to their actions or desires, over objections of Messrs. Ham and Hunt, refused to dismiss protest or to allow the appearance of counsel as friends of the Commission. Mr. Hunt thereupon moved to strike the protest upon the ground that protestants are not proper parties; that they are not customers of Highland Utilities; that they are members, and not managing officers, of the association; that if they have a just complaint against the action of their board of directors, their remedy, as members of the association, lies in the courts, the Commission being without jurisdiction to settle the questions raised. The motion was overruled. Thereupon, Mr. Ham, on behalf of the association, agreed that the association's operations of all acquired lines, if application is granted, would be subject to Commission jurisdiction and "regulation as to rates and all other matters pertinent to regulatory and supervisory powers of the Commission the same as any public utility," and if required by the Commission, "we are perfectly willing to amend our charter and by-laws to that effect."

Mr. Gordon stated that it was protestants' position that the Commission, before granting the application, should be satisfied that "Southeast Colorado Power Association is such an organization as can legally own and operate a public utility and legally acquire the properties which Highland Utilities Company desires to sell to them"; that in the event the Commission should find that it is such an entity and entitled, under the law, to own and operate a public utility, it should determine whether it is so financially and otherwise situated as to be able to carry on the obligations of the utility which it is intending to acquire, and finally, whether it is entitled, under the law, to act in one instance as a public utility, and in another instance to act as a non-utility coöperative.

In reply, Mr. Hunt stated that he had no fault to find with counsel's position, except that he could not agree that it was the Commission's obligation "to determine whether this purchasing company is a public utility for all the purposes of this endeavor." The sole question involved is "whether an already existing public utility, which for many years has been dedicated to public use, will under the reign of this contemplated purchaser, remain dedicated to the public use until leave is given by this Commission to abandon that service."

Then, Mr. E. G. Rash, manager of Southeast Colorado Power Association, testifying for applicant, identified a number of exhibits, including the As-

sociation Articles of Incorporation and Amendments thereto, and its bylaws, contract of sale and purchase, heretofore described, Southeast Colorado Power Association—United States of America loan contract and amendments thereto, and mortgage note, made pursuant to said contract, to cover the loan made to purchase plant, and they were admitted in evidence. He stated that association is engaged in distributing electrical energy at wholesale and retail to 1650 customers in Prowers, Bent, Otero, Pueblo, and Crowley counties; that its operations have been financed by the United States government through REA; that purchase of properties was regularly authorized by its Board of Directors, but the question had not been submitted to or passed upon by the members of the association; that terms, price, etc., upon which Southeast Colorado Power Association would purchase the property, were determined and settled by its directors, representatives of REA, and the association's engineer; that REA had approved contract and will advance $176,000 for the purchase of Highland properties under contract afore-described, which will add 1,000 customers, of whom 600 are in Springfield; that customers of Highland Utilities Company, with the exception of 16, most of whom were not "reachable," have signed applications for membership in the association and indicated their desire to be served by it; that association will continue to serve them and any persons in the territory who desire service, even though they do not become members, and will fulfill its obligations to serve under franchises and certificates it proposes to take over; that it proposes to build several hundred miles of rural lines in Baca and Kiowa counties to serve "people in those counties that would otherwise not get the electricity had not the association purchased these utilities," the primary purpose in purchasing the central stations involved being "to get service out to those people"; that after purchase is consummated, all properties that can be, probably will be integrated and operated as a whole; that REA, in addition to said purchase price of $176,000, being $130,000 for Baca county properties, and $46,000 for Kiowa county properties, has made an allotment to the association of $680,000 to cover cost of extensions, said rural extensions to be made on the usual terms, that is, a guaranty of use of energy amounting to $10.50 per month per mile of lines; that association has checked the territory and believes that such extensions can be made with profit, although most of Baca and Kiowa counties, outside of a few small towns like Campo not now served, is sparsely settled; that current indebtedness of association is approximately $1,000,000, all owing to the REA; that present value of properties now owned, with addition of Highland properties less extensions contemplated, is approximately $1,500,000, cost of presently operated properties by association being about $800,000; that reports covering past operations of the association have not been made to the state Commission in the past, although reports have been made to the Tax Commission for the purposes of taxation.

At the request of Mr. Gordon, transferees and Rural Electrification Administration being willing, the Commission directed the association to file

a financial statement covering association's operations, and engineering analysis of Highland Utilities Company. They were received and filed on July 5, 1944. The financial statement covered the twelve months' period ending May 31, 1944, but later Mr. Gordon submitted a critical analysis of them, which has been considered by the Commission. Total assets are shown at $906,342.94, divided into: Cash and current investments, $37,041.03; current and other assets, $119,342.41; utility plant (less $36,054.42 reserve for maintenance and depreciation), $726,804.76; and an item to balance, which does not seem to be an asset, of $23,154.71 covering extraordinary property losses. Depreciation seems to be computed at 2 per cent of the utility plant in service. This may be low, although there has been a tendency lately to decrease annual amounts reserved for depreciation.

Total liabilities are figured at $872,002.63, divided into current liabilities, $39,789.88; other liabilities and credits, $2,422.24; long term obligations (including interest accrued and deferred of $11,738.68) of $829,790.51. Net worth, including surplus of $22,633.17, amounts to $34,340.31. The items of extraordinary property losses, which apparently are being amortized, and deferred interest payments, would wipe out surplus.

The engineering analysis of the physical value of the property admittedly is based on a field check and condition study of the property made on July 21 and 22, 1943. Total book value of Colorado property is shown at $391,670, estimated RCN at $291,888, and estimated RCNLD at $158,974. Estimated RCNLD of generating plants and distribution systems at Springfield and Eads plants are figured at $133,527; estimated RCNLD of water system and ice plant are respectively $18,247 and $7,200. Intangible values (going concern, etc.) are $16,051 for Springfield, and $975 for Eads or a total of $17,026. Rehabilitation expense for Springfield and Eads is estimated at $18,000. Legal, engineering, and incidental expense for same plants is figured at $3,500. Purchase price, rehabilitation expense, legal, engineering, and incidental expense, will total $197,500. The purchase price is considerably less than "the net book value of Highland's properties, as adjusted to eliminate known writeups, as of December 31, 1942," as fixed by the Securities and Exchange Commission and much less than the book value fixed by Highland Utilities Company books, as of July 28, 1943.

Protestants did not offer any testimony, but when applicant rested, Mr. Gordon moved to dismiss the application on the grounds that showing made by applicant was insufficient to justify granting of application; that it does not appear that the association will conduct this business as a public utility under the jurisdiction of the Commission and will assume the duty of serving the public; that as a coöperative, transferee has limited powers which do not include the powers necessary to carry on the business as a public utility; that proposed sale and transfer is illegal and contrary to the provisions of the Rural Electrification Act of 1936 for a number of reasons stated; and, that it does not appear that the transfer is in the public interest. Motion was taken under advisement.

[1, 2] The contention that purchase cannot be made by association because it is contrary to provisions of Rural Electrification Act of 1936, and that loan cannot legally be made by administrator to association for purchase of the properties involved, are questions we cannot settle. The managing officers of the association, after investigation and counsel with Rural Electrification administration officials, authorized the purchase. The purchase was approved by the Administrator. It has been approved by the Securities and Exchange Commission. The allotments (loans) have been made. If the REA, its Administrator, or the association erred, question should be submitted by dissatisfied members of the association, if any there be, or other proper parties, to the courts for determination. Their remedy lies there. Re Highland Utilities Co. (Colo 1943) 52 PUR(NS) 179, citing Re Missouri Electric Power Co. (Mo 1943) 50 PUR(NS) 257. The same course should be followed by members as to the question of service to nonmembers and the operation of waterworks system at Eads and ice plant at Springfield.

[3, 4] The record is sufficient to show that, financially, transferee is able and qualified to take over and operate the Highland Utilities properties. At least, there is no evidence to the contrary. It did not appear that the management of transferee is not competent and efficient, or that the service to be furnished Highland customers may be less satisfactory than the service now furnished by Highland. We know that several times during past years complaints have been made by customers of Highland as to rates and service. It here appeared that at Eads going concern value, etc., was figured at only $975. It is significant that no customers of Highland objected to transfer. No customers of Highland or members of the association appeared in person at the hearing to voice objections to sale and purchase. Apparently, customers of Highland welcome the change and believe that they will secure adequate and satisfactory service from the association at proper rates.

Some extensions in rural areas are contemplated in the event transfer is allowed, which means that many farms now without essential electric service, and without hope of service from Highland, will be connected and receive electrical energy.

Generally speaking, a property owner should be allowed to sell, unless it would be detrimental to the public to so do (State ex rel. St. Louis v. Public Service Commission [1934] 335 Mo 448, 5 PUR(NS) 230, 73 SW(2d) 393), and it would seem that the proposed sale and purchase is in the public interest and that the sale should be allowed unless the other questions raised by Mr. Gordon before taking and at the conclusion of the testimony, require a different conclusion. In general, he suggested that it did not appear that the association is willing to assume the burden of serving the public, that is, serve as a utility; that it cannot legally, in one instance, act as a public utility, and, in another, act as a nonutility; that if it has the power to carry on this business as a public utility, it did not appear that it would submit to Commission jurisdiction.

We think the record shows that if it now lacks the power to operate a utility as a part of its business, or to operate as a utility, the association is

willing to amend its charter and by-laws to meet objection made. We believe Mr. Ham made it clear that the association is willing to do anything that may be necessary, under the law, to permit it to carry on the Highland operation as a utility, and in conducting said operation, will recognize and submit to Commission jurisdiction. We do not believe it is necessary at this time, and it probably is not within our jurisdiction in this proceeding (Natatorium Co. v. Erb, 34 Idaho 209, PUR 1922A 187, 200 Pac 348), to find that the association cannot operate as a coöperative and a utility at the same time, although there is some authority to the effect that by so doing it would become a utility as to all its operations. As a general rule, an owner or the person in control of property becomes a utility only when and to the extent that his business and property are devoted to a public use. We know that an individual or corporation may carry on a utility business, and at the same time carry on a private business. See Sunset Shingle Co. v. Northwest Electric & Water Works (1922) 118 Wash 416, 203 Pac 978. A municipally owned light plant serving residents of a municipality, is a utility, but by statute its operations are not subject to our jurisdiction. Its operations outside the municipality, if it serves the public in the same manner that it serves within the city, make it a utility in that service, and such service is subject to our regulation. Apparently, in Missouri, a corporation may incorporate to serve members as a coöperative, and also to serve "the public generally" as a utility. The Highland operations now are not integrated. If transfer is allowed, the association may continue to operate the Eads-Springfield and its presently operated system separately. If we herein had jurisdiction to find that in the event transfer is consummated, association not only becomes a public utility as to acquired lines, but its entire operation becomes subject to our jurisdiction, and on account of such ruling, it would refuse to consummate the purchase, no useful purpose would be served. It would mean that it would continue to operate as a coöperative, unregulated by us, and that customers of Highland would continue to be served by Highland, and this, obviously, the customers do not desire. From the customer relations angle, the public interest undoubtedly would be served by allowance of transfer. The customers who now are served by a public utility, would continue to receive service under Commission regulation. The members of the Co-op would continue to receive service as members thereof—perhaps under Commission regulation, if it should later be determined that, on account of the association's general method of operating, the law so requires. This proceeding and our conclusions here will not preclude a court or the Commission from finding that transferee is not a coöperative in the conduct of any part of its business, but as to all thereof is a public utility and subject to Commission jurisdiction.

In Re Western Colorado Power Co. (1942) (Application No. 5640, Decision 18147) 42 PUR(NS) 247, 250, 251, we considered and allowed application by company, a utility, to sell and transfer part of its distribution lines to Delta-Montrose Rural Power Lines Association, a coöperative, organized under Colorado statutes and financed

by REA, which was not then subject to our jurisdiction. The application was opposed by seven of the fifteen customers of Western Colorado Power Company immediately affected by the proposed change, they being satisfied with and desirous of continuing service by company under Commission regulation. The Association contemplated incorporating the segments purchased in its lines or system and extending service to other nonserviced rural areas. In passing on application, we said:

"All associations in the state of Colorado operating under direction of REA, to date, have taken the position that they are nonprofit coöperatives, and as such, are not subject to jurisdiction of the Public Utilities Commission. The Commission has been, and still is, of the opinion that question of our jurisdiction is one of law, and, at this time, we should not disapprove a contract by a public utility to sell a portion of its electric utility property to Delta-Montrose Rural Power Lines Association on the ground that it is not, or that it contends that it is not, subject to our jurisdiction. See Re Tennessee Pub. Service Co. (Tenn 1934) 5 PUR(NS) 449.

"While approval of this Commission is necessary before a sale or merger of electric utility company properties can be accomplished, the Commission may not lawfully interfere with the management and control of the utility beyond what is reasonably necessary to secure to the public adequate service at fair and reasonable rates. See Missouri ex rel Southwestern Bell Teleph. Co., v. Public Service Commission, 262 US 276, 289, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807.

"The primary question here presented is not whether the proposed sale will be in the interest of the Western Colorado Power Company or the association, but how will it affect service, accommodation, and convenience of the public, as a whole, and, in this connection, if sale is made, will the users of electricity in the territory now served by applicant which is to be transferred continue to get proper rates and service under association ownership and management, their interests, however, to be subordinate to the interests of the public generally. See Re Tennessee Pub. Service Co. *supra,* and Northern Pennsylvania Power Co. v. Public Utility Commission (1938) 132 Pa Super Ct 178, 24 PUR(NS) 443, 200 Atl 866."

Heretofore, in a number of applications approving transfers of utility properties, including certificates of convenience and necessity and franchise rights, we have held that rural electric associations purchasing a franchise, granted under ordinance, and certificates of public convenience and necessity, are not in any different position than any other purchaser acquiring such authority. And, notwithstanding charter provisions are not determinative of the utility status of a company, the real test being, not what the corporation is authorized to do, nor what its charter forbids it to do, but what it, in fact, does. (See Re Mississippi River Fuel Corp. [Fed PC 1940] 34 PUR(NS) 8; Re Hartford Electric Light Co. [Fed PC 1941] 37 PUR(NS) 193.) In order to definitely settle question of their responsibility to serve, we required the associations to amend Articles of Incorporation to show that serv-

ice to nonmembers as well as to members, is authorized.

See Re Highland Utilities Co. (Colo 1943) 52 PUR(NS) 179; Re Eagle River Electric Co. (Colo) Application No. 2135–A, Decision No. 21764, Dec. 29, 1943.

Here, the management of Highland Utilities Company, after careful consideration, desires to sell its properties and operating rights to Southeast Colorado Power Association, an REA coöperative with, so far as the record discloses, a satisfactory operating experience. The proposed transfer is believed by the contracting parties, acting through their duly authorized representatives, to be in their interest. The customers of Highland Utilities Company apparently welcome the change—at least, none of them objected. We believe that the customers of Highland Utilities Company will continue to receive from transferee adequate and reasonably efficient service at proper rates under the supervision of the Commission, and that benefits probably will accrue to many citizens of Baca and Kiowa counties not now receiving electrical service by the inclusion of the territory where they reside in the association's system, and that the convenience and necessity of the public, generally, in the territories involved will be served by allowing the transfer.

We therefore find that motion to dismiss should be denied, and that public convenience and necessity require the proposed transfer and sale to Southeast Colorado Power Association by The Highland Utilities Company of its certificates of public convenience and necessity and other properties, as set forth in paragraphs numbered III and IV in the application heretofore referred to and more particularly described in Contract of Sale and Purchase, of date November 15, 1943, being Exhibit No. 7 at the hearing, which by reference is made a part hereof, for the considerations therein expressed, subject, however, to the restrictions and conditions set forth in the order following, which in the opinion of the Commission the public interest requires.

ARIZONA CORPORATION COMMISSION

Re Lela B. Wade

Docket No. 9442–E–965, Decision No. 15052
September 29, 1944

APPLICATION *for authority to establish water system and for order curtailing and restricting rights granted to existing water company; application denied.*

Certificates of convenience and necessity, § 88 — Factors affecting authorization — Public interest.

1. The public interest is always the factor to which the Commission must give first consideration in passing upon an application for authority to conduct public utility service, p. 112.

RE WADE

Monopoly and competition, § 96 — Water service — Adequacy of existing service.

2. Authority to install a competing water plant and for a restriction of the existing plant service should be denied where petitioner's distribution system is obsolete, where the proposed service would be unprofitable, where the existing water company is prepared and willing to serve the entire area adequately and the public health will be safeguarded by the use of water of superior quality from the existing company's well, and where the existing company's authority has been granted only after notice and hearing, p. 112.

APPEARANCES: L. J. Holzworth, of Phillips-Holzworth-Phillips, for petitioner; Paul M. Roca, of Moore, Romley & Roca, for Whyman Water Works, protestant.

By the COMMISSION: By a petition and complaint filed on May 16, 1944, Lela B. Wade seeks a certificate of convenience and necessity authorizing her to establish and operate a water system in the Northeast Quarter of the Northeast Quarter of Section Fifteen, Township One, North Range One West, of Maricopa County, townsite commonly called Coldwater, post office Avondale, and for an order of the Commission curtailing and restricting the rights granted in our certificate of convenience and necessity to the Whyman-Wade Water Company on June 12, 1942, covering the district involved in this petition and complaint, including a considerable adjacent area outside thereof.

Following notice duly given, the matter came on for hearing before the Commission at its office in Phoenix on June 14 and 15, 1944, and through counsel, the Whyman Water Works (successor to Whyman-Wade Water Company) protested both the petition and the curtailment and restriction of the rights held by it.

The petitioner in the instant case is the daughter of Frank Deiter, deceased, who at the time of his death and for a good many years previous thereto owned the land covered by the instant petition. She acquired the property by inheritance. The record shows that Deiter acquired the land by desert entry filed on May 22, 1914, receiving his final certificate and patent on May 20, 1919, and September 10, 1919, respectively.

Petitioner's claims are based partially upon the plea that her father had acquired "grandfather" rights to which she had succeeded. Such rights would inhere if the evidence disclosed conclusively the commencement of operations of the water utility prior to the time that Arizona became a state, February 14, 1912. There is, however, no evidence of record that there was a distribution and sale of water by the petitioner's father at a date earlier than 1919 and it seems clear that the well from which the water is obtained was drilled some time during the year 1914 which precludes the possibility of establishing "grandfather" rights.

The record shows that the petitioner is serving ten parties who are tenants of her properties in cases in which no charge is specifically made for water. In other words, the rentals include the furnishing of water. Her public service operations cover only eight customers. The constitutional provisions under which this Commission functions are very broad and apparently apply to all cases in which a public service commodity is handled

and sold to the public. This may mean one or more. There has never been a court test on this point. However, since the Statutory Law provides that twenty-five or more consumers may file formal complaints with the Commission and inasmuch as the topography and climatic conditions in Arizona result in the distribution and sale of water by individuals to their neighbors in a good many cases, and in many instances apparently only as a matter of convenience and accommodation, we have been disposed to consider such cases as coming within the purview of the law when there are twenty-five or more consumers. We have found that if this practice were not followed, there would be frequent cases of inconvenience and perhaps suffering on the part of those who have received and are now receiving "accommodation" service, for the reason that their neighbors would not furnish the service if they were compelled to become public service corporations.

The evidence is conclusive that the Whyman Water Works has made a large investment for the purpose of serving that community and that it has a supply of water of a superior quality to that of the petitioner. The record is clear that public notice was given of the hearing at which the certificate of convenience and necessity was granted to this operator hence it cannot be successfully urged that the petitioner was deprived of any rights therein. Petitioner's distribution system is old and it seems certain that it would have to be renewed almost completely to put it in a condition to give satisfactory service. We believe also that it would be necessary to deepen the well or drill a new one to a greater depth in order to insure water of good quality suitable for human consumption. The evidence is rather persuasive that even if this were done further operations within the extremely limited area sought to be served would be unprofitable.

While the law does not prohibit two or more public service operations in the same community, there have been only two such cases since Statehood and both of them resulted disastrously both to the operators and to the consumers. This is true for the reason that it is necessary to duplicate investments resulting in excessive overhead and higher rates.

[1, 2] The public interest is always the thing to which this Commission must give first consideration. It appears to us and we find that the people in this area will be better served by the Whyman Water Works, that this company is prepared and willing to give to the entire area adequate service and that the public health will be safeguarded by the use of the water of superior quality from its well. We further find that the public convenience and necessity do not require the establishment and operation of a water plant by the petitioner herein. We are of the opinion and further find that we do not have the power, on the record here made, to curtail or restrict the operating rights granted to the Whyman Water Works and its predecessor in interest.

FEDERAL POWER COMMISSION

Re Godfrey L. Cabot, Incorporated et al.

Opinion No. 117, Docket Nos. G-523, G-529
September 22, 1944

INVESTIGATION *of proposed increased rates for wholesale natural gas supply; increased rates disallowed.*

Revenues, § 2 — Estimates for rate making — Changing conditions — Additional gas supply.

1. Operations during the past year do not provide a satisfactory measure or guide for future rates of a natural gas company when during that year sales and markets were limited by the inability of the company to supply the reasonable gas requirements of consumers in the area served, while, by reason of new pipe-line construction from other fields, the future situation as to supply will be materially altered when additional gas becomes available, p. 119.

Depreciation, § 65 — Natural gas facilities — Life of gas reserve — Length of supply contract.

2. The fact that a contract between a natural gas company and a company from which it obtains an interstate natural gas supply is for only a 20-year period, while there is an assurance of a continuing supply of gas for at least thirty years, is immaterial in determining the time for amortization and depreciation of facilities, since interstate service cannot be abandoned except with the permission of the Federal Power Commission under § 7 (b) of the Natural Gas Act, 15 USCA § 717f(b), p. 121.

Return, § 101 — Natural gas company.

3. Increased rates of a natural gas company are not warranted when revenue available will be adequate to meet necessary expenses, including depreciation and amortization, and allow a return of approximately 6 per cent on the remaining investment, p. 122.

Valuation, § 211 — Excess capacity — Burden of cost — Industrial and domestic gas customers.

4. Any attempt to saddle excessive costs for depreciation and return on domestic customers would be manifestly unfair and unreasonable where natural gas companies have created excess capacity neither used nor useful in rendering present service but originally constructed because of a hope for large industrial sales, the undertaking having been found to be "an improvident venture," p. 122.

Rates, § 391 — Wholesale supply — Emergency natural gas.

5. Increased rates for so-called emergency gas sold to a distributing company should be disapproved when no evidence is submitted to show that on the days the supply company retains emergency gas its supply is inadequate for the requirements of its customers or why all emergency gas so retained should be billed to the distributing company without considering the requirements of others equally dependent upon the selling company for their gas supply, p. 123.

APPEARANCES: Charles G. Blakeslee and Fred C. Fernald, for Godfrey L. Cabot, Inc., and Cabot Gas Corporation; Stanley M. Morley and Lambert McAllister, for Federal Power Commission; David B. Landis, for The Pavilion Natural Gas Company (intervener); Arnold H. Hirsch and Harry R. Booth, for Office of Price Administration (intervener); George D. Newton, for villages of Geneseo, Leicester, Mt. Morris, Le Roy, Warsaw, and Perry, New York (interveners).

By the COMMISSION: In this proceeding Godfrey L. Cabot, Inc. ("Cabot, Inc.") seeks to justify increased rates for natural gas supplied to its wholly owned subsidiary, Cabot Gas Corporation ("Cabot Corp.") and Producers Gas Company ("Producers"). Cabot Corp., in turn, seeks to justify increased rates to The Pavilion Natural Gas Company ("Pavilion").

Following our suspension of these rate increases under § 4(e) of the Natural Gas Act, 15 USCA § 717c (e), public hearings were held before our trial examiner in New York city on March 20–24, 1944. Concurrent hearings were held by the New York Public Service Commission with respect to the increases in Cabot Corp's. rates to Pavilion.[1] The villages of Leicester, Geneseo, Mt. Morris, Perry, Warsaw, and Le Roy, of New York state, the Office of Price Administration, and Pavilion participated in the hearings as interveners.

Operations of Cabot, Inc. and Cabot Corp.

Cabot, Inc. is a Massachusetts corporation, having its principal office in Boston, Massachusetts. It manufactures and sells carbon black and also produces, purchases, transports, and sells natural gas in West Virginia, Pennsylvania, and New York. The gas utility business is conducted as two divisions or departments, viz, the West Virginia division and the New York-Pennsylvania division.

The New York-Pennsylvania division, with which we are here primarily concerned, operates approximately 118.5 miles of pipe line, varying from 2 inches to 14 inches in diameter, located in Tioga and Potter counties, Pennsylvania, and Steuben and Allegany counties, New York. Such pipe-line facilities connect directly with the 14-inch gas transmission line of Cabot Corp. at the New York-Pennsylvania State line.

Cabot Corp. is a New York corporation and a wholly-owned subsidiary of Cabot, Inc., from which it purchases all of its natural gas requirements. It owns a 14-inch pipe line which at the present time extends 74.75 miles from its connection with the pipe-line facilities of Cabot, Inc. at the New York-Pennsylvania state line, to the southern boundary of Monroe county, New York.[2]

[1] By order of July 11, 1944, the New York Commission found that Cabot Gas Corp. failed to justify such rate increases and denied the same.

[2] This pipe line formerly extended into the city of Rochester, New York, but in 1942, when gas was no longer available for large sales to Eastman Kodak Company and Rochester Gas and Electric Corporation, Cabot Corp., after approval by this Commission, sold that portion of the pipe line (approximately 19.3 miles) north of the Monroe county line to Rochester Gas and Electric Company. Re Cabot Gas Corp. Docket No. G-227, Opinion No. 74 (1942) 43 PUR(NS) 182.

At the present time Pavilion is the principal customer of Cabot Corp., the gas being delivered at Perry Center and York. Cabot Corp. also transports gas, for the account of Cabot, Inc., to Producers Gas Company and Empire Gas and Fuel Company.

In previous cases involving Cabot, Inc. and Cabot Corp. we have found each to be a "natural-gas company" within the meaning of the act. In Re Cabot Gas Corp., Docket No. G-227, Opinion No. 74, *supra;* In Re Cabot Gas Corp. Docket No. G-251, order of July 14, 1942; In Re Cabot and Cabot Gas Corp. Docket Nos. G-407, G-406, Opinion No. 86 (1943) 47 PUR(NS) 65; In Re Cabot Gas Corp. Docket Nos. G-460, G-461, Opinion No. 105 (1943) 51 PUR(NS) 458. The present record shows that there has been no substantial change in such operations, and we find that both Cabot, Inc. and Cabot Corp. are "natural-gas companies" under the act.

The Rate Increases

Cabot, Inc. proposes to increase its rates to Cabot Corp. from 7 cents to 25 cents per thousand cubic feet, and the latter, in turn, proposes to increase its rates to Pavilion from 40 cents to 55 cents. These increases, based on 1943 sales, would have increased the gross revenues of Cabot, Inc. by $41,112.36 and the gross revenues of Cabot Corp. by $30,177.45—a decrease in the net revenues of the latter of approximately $11,000.

Cabot, Inc. also proposes an increased rate of 42 cents per thousand cubic feet for the supply of so-called emergency gas to Cabot Corp. and the latter in turn proposes to charge Pavilion 75 cents per thousand cubic feet for such emergency gas. Cabot, Inc. also proposes an increased rate of 42 cents per thousand cubic feet for so-called emergency gas supplied to Producers Gas Company as compared with an average price of 25 cents per thousand cubic feet charged Producers for gas regularly supplied. Such increases in rates for so-called emergency gas based on the volume of emergency gas claimed to have been delivered to these companies during January and February, 1944, would increase the cost of gas to Pavilion by $3,268 and to Producers by $1,937.

The issue now before us is whether Cabot, Inc., and Cabot Corp., have sustained their statutory burden of justifying these rate increases. In determining that issue it is appropriate to review briefly the history of this enterprise.

History of Operations

On December 18, 1934, Cabot, Inc. was authorized to do business in Pennsylvania, but its authority with respect to the transportation and sale of gas was restricted to the transportation for its own operations and the sale of gas at the well mouth. However, in 1935 it commenced the solicitation of industrial customers. It obtained several such customers, some of which were then being supplied by other gas companies in the area.

When Cabot, Inc. commenced construction of a line to serve one of North Penn Gas Company's customers, the latter complained to the Pennsylvania Commission and the construction of the line was enjoined. North Penn Gas Co. v. Cabot (Pa 1936) 15 PUR(NS) 23. Cabot, Inc. then formed Service Gas Company and

in January, 1936, the latter filed an application with the Pennsylvania Commission for authority to engage in the gas business in twenty-two Pennsylvania counties, including nineteen counties already being served by other natural gas companies. Four of these companies filed protests in the Pennsylvania Commission proceeding. Re Service Gas Co. (Pa 1936) 15 PUR(NS) 202.

Cabot, Inc. had purchased some gas wells in the Oriskany pool. Because of the migratory character of the gas in the porous Oriskany sands, from which other companies were taking gas, Cabot, Inc., through Service Gas Company, proposed to serve industrials in order to sell as much gas as possible and thereby recover a greater portion of gas in the area than it otherwise could.

Cabot, Inc. proposed to supply gas to domestic customers only in so far as it was required to do so and it urged before the Pennsylvania Commission that it had to obtain a large industrial business in order to recoup its investment. This argument was rejected, the Commission stating that "We do not feel that protection of an investment made under such circumstances should be the controlling end to be furthered by our action." (15 PUR (NS) at p. 208).

The Pennsylvania Commission also rejected the contention with respect to the public being entitled to "cheap gas" (15 PUR(NS) at pp. 205, 206):

"The argument made in support of the applications that the public is entitled to cheap gas would be more persuasive if applicants intended to serve the general public. The terms of the applications negative such an intention. We perceive no valid reason why the general domestic and commercial public should not be entitled to cheap gas, as well as the large industrial users. When asked why he did not desire domestic markets, Thomas D. Cabot replied 'Because we can sell much more gas in a much shorter time and there must be an outlet for our gas.' This reason is obviously private and not public in character. It does not convince us that we should grant a certificate to serve only a portion of the public."

The Pennsylvania Commission was convinced that Cabot, Inc., if permitted to do so, would deplete the Oriskany reserves as quickly as possible and then withdraw without any effort to continue gas service to the public. (15 PUR(NS) at pp. 206, 207).

The Pennsylvania Commission accordingly dismissed the Service Gas Company's application on June 23, 1936. The complaint of North Penn Gas Company was sustained and Cabot, Inc. was required to "forthwith cease and desist from the transportation and sale of natural gas to the public in the commonwealth of Pennsylvania, until it shall have obtained a certificate of public convenience authorizing such transportation or sale." (*supra*, 15 PUR(NS) at p. 24).

The Pennsylvania Commission's order was sustained by the superior court of Pennsylvania. Incorporators of Service Gas Co. v. Public Service Commission (1937) 126 Pa Super Ct 381, 18 PUR(NS) 256, 263, 190 Atl 653, 658. In its opinion, the court stated:

"Thomas D. Cabot, treasurer of

Cabot [Godfrey L. Cabot, Inc.], and of the proposed Service Gas Company, testified that the intent was to undersell the present distributors of gas in so far as industrial consumers were concerned. *It is not the function of the Commission to expedite or assure substantial returns on a speculative venture.* 'The basis of the action of the Commission is the interest of the public as distinguished from the interest of the corporation or individual making the application. . . .' The record is replete with appellants' declarations that they are interested primarily in the industrial users of gas, and only in such service to the general public as they may find it profitable, or be required, to render. . . . The acquisition of this industrial business by appellants, with the resulting loss of sales by protestants, would place inevitably a greater burden upon the domestic and other consumers served by the latter." [Italics supplied.]

In addition to the plan to operate in Pennsylvania, for which authority was denied, Cabot, Inc. proposed to transport and sell natural gas in New York. To conduct its New York operations, Cabot, Inc. organized Cabot Corp. The latter was to construct and operate approximately 95 miles of 14-inch pipe line extending from a point of connection with Cabot, Inc.'s facilities at the Pennsylvania-New York state line to Rochester, New York. Cabot Corp. applied to the New York Commission for authority to construct such a line at about the same time Service Gas Company filed its application, subsequently denied, with the Pennsylvania Commission. Re Cabot Gas Corp. (1936) 16 PUR(NS) 443.

At the hearing on the application before the New York Commission it was shown that, although Cabot Corp. proposed to make some domestic sales, both directly and through sales to Pavilion for resale, the principal purpose of the line was to deliver large volumes of gas for boiler fuel in Rochester, New York. Prior to the construction of the line a 3-year contract was made with Eastman Kodak Company providing for the daily delivery of 25,000,000 cubic feet of gas for industrial use. This one sale comprised 65 per cent of the total estimated sales by Cabot Corp. Furthermore, it was estimated that 90 to 95 per cent of the initial sales "would be used for low grade industrial purposes, mostly boiler fuel." (at pp. 455–457, 475). In such proceedings, Godfrey L. Cabot testified that he expected very large profits, and that while he would have at least twenty years to amortize the line, his investment would be returned in "not less than three years and not more than five." He further testified that the Oriskany gas "will last generations before it is all gone and that domestic consumers will be getting gas from Oriskany at least fifty years hence." He added that, upon depletion of the natural gas, he intended that service to domestic consumers be continued with coke oven gas.

The New York Commission authorized the construction of the 14-inch line by Cabot Corp. on September 23, 1936. In so doing the Commission indicated that while it considered the proposed large sales of gas for industrial purposes uneconomic, it was unable, because of its limited authority, to effect proper conservation

of this gas. Re Cabot Gas Corp. *supra,* 16 PUR(NS) 443.

From 1937 through 1939 the Cabot companies sold large volumes of natural gas for industrial purposes. In 1940 such sales were abruptly reduced and no direct industrial sales were made after that year, because of the depleted gas supply. The industrial sales and total sales for both Cabot, Inc. and Cabot Corp. from 1937 through 1943 were as folows: [3]

	Cabot, Inc.		Cabot Corp.	
	Industrial M cu. ft.	Total M cu. ft.	Industrial M cu. ft.	Total M cu. ft.
1937	7,539,374	8,749,528	5,270,121	5,652,088
1938	7,747,866	10,872,659	6,006,652	7,461,535
1939	7,302,745	10,758,227	5,708,571	7,365,928
1940	157,472	2,363,157	124,467	897,657
1941		1,055,410		562,676
1942		816,421		330,005
1943		589,383		226,114
	22,747,457	35,204,785	17,109,811	22,496,003

As above shown, the facilities of Cabot, Inc., in the New York-Pennsylvania area, as well as those of Cabot Corp. were designed and constructed to provide capacity for the gathering and marketing of gas when flush production could be had. This is also reflected in the sales between 1937 and 1943. During the years 1937–1939, inclusive, Cabot, Inc. sold 30,380,414 thousand cubic feet of gas as compared with 4,824,371 thousand cubic feet during the 4-year period 1940–1943, inclusive. Sales by Cabot Corp. are even more striking in this regard. During the 3-year period, 1937–1939, sales by Cabot Corp. totaled 20,479,551 thousand cubic feet, as compared with 2,016,452 thousand cubic feet for the 4-year period 1940–1943. During 1937–1939, the years of flush production, Cabot, Inc. produced and Cabot Corp. transported, via its 14-inch line, in excess of 50,000,000 cubic feet on peak days. Peak day deliveries via this line during 1943 were 1,206,000 cubic feet.

At present Cabot, Inc. owns and operates 27 producing wells in this area. It purchases gas from 12 other producing wells. Its available reserves of recoverable gas are problematical. In Docket Nos. G-406 and G-407 (1943) 47 PUR(NS) 65, it was claimed that available reserves would be so depleted by June, 1943, that thereafter the continued supply of gas by Cabot Corp. to Pavilion would be impossible. In Docket Nos. G-460 and G-461 (1943) 51 PUR (NS) 458, it was claimed that gas was not available to meet the peak day requirements of Pavilion beyond October, 1943. Pavilion was called upon and did cut its requirements to the bone by curtailing gas for house heating and otherwise. Actual production by Cabot, Inc. in 1942 and 1943 greatly exceeded such estimates, and Cabot, Inc. now comes forward with estimates of remaining available gas ranging from 1,250,000 thousand cubic feet to 2,500,000 thousand cubic feet.

Regardless of what local gas is available for future operations, Cabot, Inc. and Cabot Corp. have whittled

[3] Industrial sales by Cabot, Inc. include sales to Cabot Corp. for resale for industrial use. However, industrial sales by Pavilion are not reflected in the industrial sales shown.

down the available supply of local gas to the vanishing point. Therein lies applicants' present difficulty—too much plant, too little gas. Pavilion's purchases in 1940 were in excess of 400,000 thousand cubic feet. But Pavilion was forced to curtail the use of gas in every way possible during subsequent years so that remaining requirements would not exceed the supply available from Cabot, Inc. and Cabot Corp. Pavilion's purchases in 1943 were approximately 50 per cent of its purchases in 1940. However, the Cabot companies deliberately created the situation which they now face. An abundant supply of gas was dissipated. Extravagant facilities were constructed to reap quick profits from flush production.

Future Operations of Cabot, Inc. and Cabot Corp.

[1] Present operations by Cabot, Inc. and Cabot Corp. are but an interlude between the past and the future. Although the local supply of natural gas available to Cabot, Inc. and Cabot Corp. has become depleted, or nearly so, interstate gas from Texas will be available within the near future. This Commission, early in 1944, authorized the construction of a pipe line from the Texas gas fields to the Appalachian area. In Re Tennessee Gas & Transmission Co. (1943) Opinions Nos. 93 and 93-A, 50 PUR (NS) 199. Relying upon such supply of natural gas, Cabot, Inc. on December 9, 1943, entered into a contract with New York State Natural Gas Corporation providing for the supply of 592,750 thousand cubic feet of natural gas annually with maximum daily deliveries limited to 1,750 thousand cubic feet. This is more than the total estimated requirements of Cabot, Inc. for the year 1944 and approximates 1943 requirements.

This Texas gas, which will soon be available, plus local gas, as estimated by operating officials of Cabot, Inc., will make available to Cabot, Inc. in excess of 1,000,000 thousand cubic feet of gas during 1945. Not since 1941 has Cabot, Inc. had an equal supply.

Operations during 1943, therefore, do not provide a satisfactory measure or guide for future rates, since sales and markets were limited by the inability of the Cabot companies to supply the reasonable gas requirements of consumers in the area. As gas production recedes, costs remain relatively stable but sales decrease month by month. However, markets are not failing, and the situation as to supply will be materially altered when Texas gas becomes available.

Excess of Revenue over Out-of-pocket Expenses

The combined earnings of Cabot, Inc. and Cabot Corp. for 1943 were $72,944 in excess of out-of-pocket costs. The following statement of revenue and expenses is shown by the record:

	Cabot, Inc.	Cabot Corp.
Operating Revenues	$127,088	$96,430
Operating Revenue Deductions		
Operating Expenses	94,646	22,948
Depreciation	92,157	61,119
Amortization and Depletion of Producing Properties	3,591	
Taxes	10,990	19,812
Exploration and Development Costs	1,988	
Loss on Gas Plant Leased to Others	189	
	$203,561	$103,879
Net Utility Income	($76,473)	($7,449)

Included in the revenues shown above is $17,560 of intercompany revenue and in the expenses, $1,572 of intercompany expense. A total of $156,866 for depreciation and depletion, which is not an out-of-pocket expense, is also included. By combining the revenues and expenses and eliminating intercompany charges and allowances for depreciation and depletion, the consolidated revenues of the two companies are found to exceed their consolidated out-of-pocket expenses by $72,944, as follows:

	Cabot Inc.	Cabot Corp.	Total	Inter-Company Eliminations	Net
Revenue	$127,088	$96,429	$223,517	$17,560	$205,957
Out-of-pocket Expenses:					
Operating Expenses	94,646	6,960	101,606	1,572	100,034
Taxes	10,990	19,812	30,802		30,802
Loss on Gas Plant leased to others	189		189		189
Exploration and Development Costs	1,988		1,988		1,988
Total[4]	$107,813	$26,772	$134,585	$1,572	$133,013
Excess of Revenue over Out-of-Pocket Expenses	$19,275	$69,657	$88,932	$15,988	$72,944

The above statement does not include annual charges for depletion and depreciation nor an allowance for return. The amounts for these items are as follows:

	Depreciation	Return	Total
Cabot, Inc.	$95,747	$31,481	$127,228
Cabot Corp.	61,119	25,713	86,832
Total	$156,866	$57,194	$214,060

A determination of the reasonableness of these claimed cost items for depreciation and return requires careful consideration of the utility plant to which they relate. The net depreciated cost of gas plant, at December 31, 1943, for Cabot, Inc. and Cabot Corp. was as follows:

	Original Cost	Depreciation	Depreciated Original Cost
Cabot, Inc.	$1,632,778.37	$1,199,121.50	$433,656.87
Cabot Corp.	1,224,948.21	856,847.70	368,100.51
Total	$2,857,726.58	$2,055,969.20	$801,757.38

[4] These totals include about $35,000 of administrative and general expenses much of which might be incurred in connection with the operations of Cabot, Inc., even though Pennsylvania-New York gas operations were abandoned. In this circumstance, these totals may be overstatements.

The above figures for Cabot Corp., however, include costs for 9.61 miles of pipe line north of York station not used or useful in serving Pavilion The original cost of this segment of line, depreciation relating thereto, and the remaining net cost, computed from figures of record, at December 31, 1943, were as follows:

Original Cost	Accrued Depreciation	Original Cost Less Accrued Depreciation
$151,366.47	$106,928.27	$44,438.20

If, from the totals for such items representing investment of Cabot, Inc. and Cabot Corp. at December 31, 1943, the above items are deducted, the result will be:

	Original Cost	Accrued Depreciation	Original Cost less Accrued Depreciation
Total, Cabot, Inc. and Cabot Corp.	$2,857,726.58	$2,055,969.20	$801,757.38
Less:			
9.61 miles of Cabot Corp. line	151,366.47	106,928.27	44,438.20
	$2,706,360.11	$1,949,040.93	$757,319.18

It is also clear that not all of the facilities of Cabot, Inc., for which costs are included in the above figures, are presently used and useful in supplying gas to Cabot Corp. and in turn to Pavilion. The record shows that the 8-inch line extending from the State line compressor station, where the 14-inch line of Cabot Corp. connects with facilities of Cabot, Inc., to Sanford station where Cabot, Inc. supplies gas to Producers Gas Company has no utility service in the supply of gas to Cabot Corp. for the use of Pavilion. Likewise lines in the Woodhull field and connecting transmission pipe lines to the Cabot, Inc. system are utilized to supply gas to Southern Tier Gas Company, which in turn sells gas to the municipal distribution system in Bath, New York. The record shows that various other pipe lines and compressors likewise are not used and useful in serving Cabot Corp. and Pavilion.

The New York-Pennsylvania division of Cabot, Inc. was organized in 1935. The record does not show what part of its existing facilities were placed in operation prior to 1937 when the 14-inch line of Cabot Corp. went into operation. A witness for Cabot, Inc. testified that the service life of the 14-inch line of Cabot Corp. would be its economic life measured by the length of the period during which gas would be available from Texas and not the structural life of the pipe itself. This witness, in submitting certain testimony and evidence, employed a 25-year life in figuring straight line depreciation.

[2] In Re Tennessee Gas & Transmission Co. *supra,* we found that the gas reserves available for that company's project "will have a life of at least thirty-three years, based on annual withdrawals at the rate of 75 per cent of the initial pipe-line capacity."

Since this gas will be made available to Cabot, Inc., through its contract with New York State Natural Gas Corporation, there appears to be a reasonable assurance of a continuing supply of Texas gas to Cabot, Inc., for at least thirty years. In this connection, the fact that Cabot, Inc.'s contract with New York State Nat-

ural Gas Corporation is for a 20-year period is immaterial, since interstate service cannot be abandoned except with our permission under § 7(b) of the act, 15 USCA § 717f(b).

If the remaining investment (original cost less accrued depreciation) at December 31, 1943, as shown by the books of Cabot, Inc. and Cabot Corp., is amortized over a 20-year period, the annual charge would be $37,865. If a 25-year period is used, the annual charge would be $30,293; and for a 30-year period, the annual charge would be $25,244.

The excess of revenue over out-of-pocket expenses for 1943 has been shown to be $72,944. If from such excess there is deducted $37,866, annual allowance for depreciation and amortization on an assumed 20-year period, there remains $35,078 for return on $757,319, the depreciated original cost of property, per books, of Cabot, Inc. and Cabot Corp. This would provide an annual return of 4.63 per cent. If a 25-year period is employed, the revenue available on the basis of 1943 operations would be 5.63 per cent and if a 30-year period is used, the annual return would be 6.29 per cent.

[3, 4] In this proceeding we are not called upon to determine what will be reasonable rates for an indefinite period in the future, but whether, on the basis of present operations, the increased rates are warranted. We have carefully considered the evidence of record and it appears clear that, at present rates, the revenue available to Cabot, Inc. and Cabot Corp. will be adequate to meet necessary expenses, including depreciation and amortization, and allow a return of approximately 6 per cent on the remaining investment.

In determining such depreciation and amortization allowances and in figuring the rate of return, the remaining investment of Cabot, Inc. and Cabot Corp. has not been reduced by the elimination of costs representing property no longer used and useful in the public service. The Cabot companies failed to identify such property, or show its original cost, or the depreciation therein. They had that obligation. Moreover, no adjustment has been made to eliminate costs representing existing excess capacity of facilities. That such excess capacity has not been written off against flush production is clear from the record.

Furthermore, the president of Pavilion testified that if the increase to Pavilion became effective it, in turn, would be forced to pass on to its customers the increase in cost of gas; that such an increase would inevitably result in a further reduction in the volume of sales. The increase to 55 cents per thousand cubic feet proposed by Cabot Corp. on sales to Pavilion, therefore, might provide even less revenue than the present rate of 40 cents. As the Supreme Court said in Florida v. United States (1931) 282 US 194, 214, 75 L ed 291, 51 S Ct 119:

"The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

Cabot, Inc. and Cabot Corp. are not guaranteed a recovery of investment and an annual return, over the years, upon an undertaking which we found in our Opinion No. 74 (1942) 43 PUR(NS) 182, to be "an improv-

ident venture." The facilities provided by Cabot, Inc. were part and parcel of the same undertaking. It was not the demands of the domestic consumers but the hope for large industrial sales which determined the size of the facilities provided. The companies do not contend that the excess capacity is either used or useful in rendering present service, and any attempt to saddle excessive costs for depreciation and return on the domestic consumers would be manifestly unfair and unreasonable.

We also note that the spread between present rates charged Producers and Pavilion, for regular deliveries of gas, is 15 cents per thousand cubic feet (40 cents– 25 cents). For such gas it is proposed to increase the rate to Pavilion from 40 cents to 55 cents per thousand cubic feet. The rate to Producers is to remain at 25 cents per thousand cubic feet. Thus the spread would be increased to 30 cents per thousand cubic feet. If the proposed rate to Pavilion were allowed to become effective, the rate to Producers would be only 45 per cent of the rate charged Pavilion. Neither Cabot, Inc. nor Cabot Corp. made any attempt to justify this apparent discrimination.

Increase in Rates for So-called Emergency Gas

[5] Increased rates for so-called emergency gas, as proposed by Cabot, Inc. and Cabot Corp., are to apply to gas which Cabot, Inc. obtains from New York State Natural Gas Company under a coöperative arrangement effected by the War Production Board to enable Cabot, Inc. and Cabot Corp. to meet their peak requirements during the winter season of 1943–1944.

The rate schedule filed by Cabot, Inc. recites the formula by which Cabot, Inc. is to determine the amount of so-called emergency gas to be charged to Producers and to Cabot Corp. at 42 cents per thousand cubic feet. The rate schedule filed by Cabot Corp., covering sales to Pavilion, provides that all emergency gas thus apportioned to Cabot Corp. is to be billed to Pavilion at 75 cents per thousand cubic feet. Under the arrangement, all emergency gas retained by Cabot, Inc. and not delivered to Penn York is billed to Producers and Pavilion, even though the amount so retained (1) was in excess of actual emergency requirements and (2) was utilized in serving other customers.

Cabot, Inc. and Cabot Corp. introduced evidence showing the amount of so-called emergency gas received from New York State Natural Gas Company and the amount of gas delivered to Penn York as well as the apportionment of retained gas between Producers and Pavilion. No evidence was submitted to show, (1) that on the days Cabot, Inc. retained emergency gas its supply was "inadequate for the requirements of its customers" or (2) why all such emergency gas so retained by Cabot, Inc. should be billed to Producers and Pavilion without considering the requirements of others equally dependent on Cabot, Inc. for their gas supply.

The rate of 75 cents per thousand cubic feet to Pavilion is made up of a charge of 42 cents for so-called emergency gas purchased by Cabot Corp. from Cabot, Inc. plus a transportation charge of 33 cents. The maximum distance such gas is transported is

65.14 miles and major deliveries are made to Pavilion at Perry Center only 55.27 miles north of the New York-Pennsylvania line.

Producers pays 25 cents per thousand cubic feet regularly. It is proposed to charge Producers 42 cents per thousand cubic feet for so-called emergency gas, an increase of 17 cents per thousand cubic feet. The increase to Pavilion, as proposed, is from 40 cents to 75 cents, an increase of 35 cents per thousand cubic feet. Producers is to be charged exactly what Cabot, Inc. is scheduled to pay for the gas. Pavilion is to pay 33 cents in addition to such cost. This difference has not been justified. In fact, no effort was made by Cabot, Inc. or Cabot Corp. to justify the difference beyond showing the mathematical derivation of the 75 cents per thousand cubic feet proposed.

The record also shows that Cabot Corp., in its telegram of January 9, 1944, to Pavilion, stated that if increased rates proposed by Cabot, Inc. and Cabot Corp. became effective on January 12, 1944, the price of such emergency gas was to be 72 cents per thousand cubic feet. Filed rate schedules, however, contain no such provision. In any event, a 72-cent rate or a 75-cent rate, under the circumstances, is relatively the same. Neither rate has been justified.

Conclusion

We have carefully considered the evidence relating to the proposed increase in rates, the briefs filed by the parties in interest, and conclude from the entire record that the increased rates, under suspension pursuant to our prior orders, have not been justified.

An appropriate order will be issued.

Order

Upon consideration of the record herein, and having on this date made and entered its Opinion No. 117, which is made a part hereof by reference,

The Commission *finds* that:

(1) Godfrey L. Cabot, Inc. (Cabot, Inc.) and Cabot Gas Corporation (Cabot Corp.) are engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption and are natural gas companies within the meaning of the Natural Gas Act.

(2) Cabot, Inc.'s rates now in effect for the sale for resale of natural gas to Cabot Corp. (Godfrey L. Cabot, Inc. Rate Schedule FPC No. 1 and Supplement No. 8 thereto) and to Producers Gas Company (Godfrey L. Cabot, Inc. Rate Schedule FPC No. 5 and Supplement No. 2 thereto) and Cabot Corp.'s rates now in effect for the sale for resale of natural gas to The Pavilion Natural Gas Company (Cabot Gas Corporation Rate Schedule FPC No. 1 and Supplements Nos. 1, 3 and 7 thereto) are subject to the jurisdiction of the Commission.

(3) The proposed increased rates, suspended by the Commission, for the sale for resale of natural gas by Cabot, Inc. to Cabot Corp. (Supplements Nos. 9 and 10 to Godfrey L. Cabot, Inc. Rate Schedule FPC No. 1) and to Producers Gas Company (Supplement No. 3 to Godfrey L. Cabot, Inc. Rate Schedule FPC No. 5) and Cabot Corp.'s proposed increased rates for the sale for resale of natural gas to

The Pavilion Natural Gas Company (Supplements Nos. 8 and 9 to Cabot Gas Corporation Rate Schedule FPC No. 1) are subject to the jurisdiction of the Commission.

(4) Cabot, Inc. and Cabot Corp. have failed to sustain the burden of proof imposed upon them by § 4(e) of the Natural Gas Act, 15 USCA § 717c(e), to show that the proposed increased rates are just and reasonable.

(5) The rates referred to in finding (2), above, should be retained in full force and effect unless otherwise ordered by the Commission, and the proposed increased rates referred to in finding (3), above, should be disallowed.

The Commission, therefore, *orders* that:

(A) The rates referred to in finding (2), above, shall remain in full force and effect until further order of the Commission.

(B) The proposed increased rates referred to in finding (3), above, be and they are hereby disallowed and shall not become effective.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Milltown Mutual Telephone Company

2-U-1989
November 20, 1944

APPLICATION *by telephone company for authority to increase rates; higher rates in revised form approved.*

Rates, § 553 — Telephones — Charge for desk set and handset equipment.

1. A telephone company should not make an added charge for desk set and handset equipment used in residential and rural service, p. 126.

Rates, § 311 — Instrument change — Special charge.

2. A telephone company should be permitted to charge for a change in type of instrument made at the subscriber's request, p. 126.

Rates, § 82 — Jurisdiction of Commission — Prescribing schedules.

3. The Commission, in the exercise of its continuing duty to assure the public of adequate service at reasonable rates, is not limited to granting or denying an application by a company in a rate case, but it has jurisdiction to prescribe such other rates within the scope of the proceeding as will be reasonable, p. 127.

By the COMMISSION: On August 29, 1944, the Milltown Mutual Telephone Company, Polk county, filed an application for authority to increase rates for telephone service at its Milltown exchange. Proof of service of notice of the proposal in said application upon the Price Administrator of the Office of Price Administration and of consent to intervention by said Price Administrator in this proceeding, as required by general order No.

2 of the Public Service Commission was received on September 8, 1944. In a letter to the utility dated September 19, 1944, the Office of Price Administration informed the utility that it did not intend to participate in these proceedings. Hearing was held October 18, 1944 before Examiner Samuel Bryan.

APPEARANCES: Milltown Mutual Telephone Company, Fred S. Larsen, President, Centuria; George E. Peterson, Director, Milltown.

The applicant serves approximately 410 subscribers on metallic circuits connected to its 110-line capacity magneto switchboard located at Milltown, Polk county. Sixty-six of its subscribers are stockholders in the company. According to its 1943 report to the Public Service Commission, the applicant has 2 miles of pole line in local service and 81½ miles in rural service to its 120 local and 290 rural subscribers. The company also owns approximately one-half of interexchange lines to Amery, St. Croix, and Luck. Subscribers receive unlimited service to each of the above-named points.

Previous to entering an application for authority to increase rates, officials of the Milltown Mutual Telephone Company conferred with members of our staff relative to the effect on the financial operations of the company of wage increases granted on January 1, 1944, and of the increased cost of materials and supplies. Although the company's officials expressed an intention to seek an average increase of $1 per quarter in the rates for telephone service at Milltown, they decided, after obtaining the results of an analysis made by our staff, that an average increase in rates of 50 cents per quarter would provide sufficient additional revenues. The present rates for exchange service at Milltown are as follows:

	Per Quarter	
Urban service	Gross	Net
One-party business	$6.50	$6.00
Two-party business	5.50	5.00
One-party residence *	5.25	4.75
Two-party residence *	4.75	4.25
Four-party residence *	4.00	3.50
Rural service		
Multiparty *	4.00	3.50
Extension telephone service		2.50

* An additional charge of 45 cents per quarter for desk sets and 69 cents per quarter for handset equipment is made for residence and rural service.

[1, 2] The applicant proposed to increase all rates 50 cents per quarter. Although a review of revenues and expenses of the company for the first seven months of 1944 indicates that an increase in rates in the amount applied for can be justified, such an increase would perpetuate certain irregularities in the rates which should be discontinued. The company has had, in effect, an added charge for desk set and handset equipment used in residential and rural service. These charges were authorized at a time when the wall set was the standard telephone instrument and the desk set and the handset were considered frills with an uncertain permanent value. At the present time we consider the wall set and handset as standard telephone equipment and the desk set as obsolete. We have so ruled in many cases involving other telephone utilities. The Milltown Mutual Telephone Company now has a total of 91 handsets and desk sets. Thus, about 25 per cent of all its instruments are of this type. We recognize that one of the purposes of the utilities in filing hand-

set and desk set charges was to have such charges serve as deterrents to too rapid change-over from, and early retirement of, wall telephones. Accordingly we will in this case authorize a change in type of instrument charge which the experience of other telephone companies has proved to be effective for this purpose.

[3] From data available in our files on studies of the cost of rendering extension telephone service, we conclude that a rate of not more than $2.25 per quarter for business extension telephone service and $1.50 per quarter for residence extension service should be prescribed for the Milltown Mutual Telephone Company. Since we have a continuing duty under the statute to assure the public of adequate service at reasonable rates, we are not limited to granting or denying the application of the company, but have jurisdiction to prescribe such other rates within the scope of this proceeding as will be reasonable. The rates given below were designed by our staff after a study of the rates of comparable telephone companies and a consideration of the value of service to each class of subscriber of the applicant. The rates will produce approximately the same revenues as those proposed by the applicant.

	Per Quarter Gross	Net
Urban service		
Business one-party	$8.00	$7.50
Business two-party	6.50	6.00
Residence one-party	6.50	6.00
Residence two-party	5.50	5.00
Residence four-party	4.50	4.00
Rural service		
Multiparty	4.50	4.00
Extension telephone service		
Business		2.25
Residence		1.50
Change in type of instrument at subscriber's request		1.00

We estimate below the revenues and expenses of the Milltown Mutual Telephone Company under the proposed rates. Our estimate is based upon the revenue and expenses of the company for the first six months of 1944 with adjustments in exchange revenues for the increase in revenues from the rates given above and adjustments in toll revenues based upon a 4-year average:

Operating revenues	
Local service	$6,990
Toll service	1,050
Miscellaneous revenues	50
	$8,090
Less uncollectible revenue	100
	$7,990
Operating revenue deductions	
Telephone operating expenses	
Repair labor	$1,515
Repair materials and supplies	450
Operators' wages	2,800
Other traffic expense	325
General office salaries	610
Other general expense	290
	$5,990
Depreciation expense	805
Taxes	685
	$7,480
	510

The indicated return of $510 is approximately 6 per cent on the net book value of the plant, $7,517, plus an allowance for materials and supplies of $580 and for working capital, $600. It is not necessary to pass on the accuracy of the assumed rate base used in this case, except to point out that it is based upon data taken from the annual report of the company, and that we are satisfied that it is not excessive. The present billing and discount practices of the applicant provide that gross rates are applied to all bills paid after the last day of the quarter, and net rates to bills paid on or before the last day of the quarter.

The applicant requests that the final discount date be changed to the fifteenth day of the third month of each quarter. This request is reasonable and our order will provide a billing and discount rule that will change the discount date as requested.

Finding

The Commission finds:

1. That the present rates and rules of the Milltown Mutual Telephone Company are unreasonable and that the rates herein ordered are reasonable.

2. That the present billing and discount practices of the applicant are unreasonable and that the billing and discount rule authorized herein is reasonable.

ORDER

It is therefore *ordered:*

1. That the Milltown Mutual Telephone Company is directed and authorized to charge and apply to its service the following rates and rules effective with the next billing period following the date of this order:

	Per Quarter Gross	Net
Urban service		
Business one-party	$8.00	$7.50
Business two-party	6.50	6.00
Residence one-party	6.50	6.00
Residence two-party	5.50	5.00
Residence four-party	4.50	4.00
Rural service		
Multiparty	4.50	4.00
Extension telephone service		
Business		2.25
Residence		1.50
Change in type of instrument at subscriber's request		1.00

(Note) The subscriber has a choice of handset, desk-set, or wall-set equipment under these rates.

Billing and Discount Rule—Bills for exchange service are rendered on or about the first day of the third month of each quarter in advance at the gross rate and a discount of the difference between the gross and net rates is allowed on all bills paid on or before the fifteenth day of the third month of the quarter.

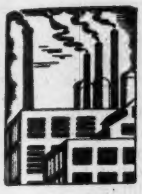
2. That the additional charge for desk-set and handset equipment in residential and rural service shall be discontinued.

3. That the rates and rules of the Milltown Mutual Telephone Company on file with the Public Service Commission not specifically listed above will remain in effect.

Kuhlman Dry Type Transformers are often preferable to oil-cooled types for inside installation. They do not require fireproof vaults. They may be mounted on wall platforms or on beams or girders near the ceiling, thus conserving valuable floor space, and they often reduce secondary copper requirements. They lighten the maintenance burden because there are no liquids to inspect, change, or filter.

Kuhlman Dry Type Transformers are particularly suitable for 1) Insulating a circuit from the source of supply (as a lighting circuit from a power circuit), 2) Operating low voltage portable tools from power circuits instead of lighting circuits, 3) Distributing power at 480 or 600 volts and stepping it down to 120 volts at strategic points, 4) Boosting voltage to correct for voltage drop in plant wiring, 5) Balancing voltage on a single-phase 3-wire system, obtaining a three-wire circuit from a two-wire system and changing from three-phase to two-phase. Write for complete facts about Kuhlman Dry Type Transformers.

Kuhlman ELECTRIC COMPANY • BAY CITY, MICHIGAN



Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Silex Company Appoints New Commercial Sales Manager

A. J. NORDSKOG, who has represented the Silex Company for approximately eight years in the Metropolitan New York area as commercial district manager, has just been appointed commercial sales manager to supervise sales of institutional equipment on a national basis.

Mr. Nordskog has made an intensive study of the needs of all types of restaurants, soda fountains, and other institutions using coffee making equipment, and is well equipped to be of assistance to present users and prospective purchasers of coffee making equipment.

Mr. Nordskog will travel extensively in his efforts to be of help to the types of trade mentioned above.

McAusland Elected Treasurer Reliance Electric & Eng. Co.

P. G. MCAUSLAND, for the past two years comptroller of the Reliance Electric & Engineering Company, Cleveland, has been elected treasurer, it was announced recently by the board of directors. He will continue to serve as comptroller.

In his enlarged responsibilities, Mr. McAusland succeeds H. M. Hitchcock, who retired December 31st.

New Test for Highway Engineers

AN interesting new test for cutback asphaltic mixes is suggested in recent work by A. W. Dow, Inc., of New York. A conventional stripping test followed by a Hubbard field stability test of the same sample is advocated as closely paralleling the field conditions that the mix must withstand.

The results and a detailed description of the test are published in a leaflet by Kotal Company of 52 Vanderbilt avenue, New York 17, New York.

ASA Elects Officers for 1945

HENRY B. BRYANS, executive vice president and director of the Philadelphia Electric Company, has been reëlected president of the American Standards Association. Mr. Bryans has already served one term as president and has been a member of the board of directors since 1941.

Other officers of the association are—Vice President: George S. Case, chairman of the board of the Lamson and Sessions Company (reëlected); Chairman, Standards Council: H. S. Osborne, American Telephone and Telegraph Company (reëlected); Vice Chairman, Standards Council: E. C. Crittenden, National Bureau of Standards (reëlected).

Latest Lighting Developments To Be Featured

THE leading lamp and lighting equipment manufacturers of the United States will join together next April 19 to 23, 1945, in the International Lighting Exposition at the Palmer House in Chicago to unveil the newest developments in lamps and lighting equipment for industrial plants, schools, offices, stores, and similar locations and at the same time show how better lighting is speeding war production and helping to win the war. This will be the largest exhibit of industrial and commercial lighting equipment ever assembled under one roof.

Architects, consulting engineers, building

managers, electrical contractors, wholesalers, electrical dealers, school executives, and executives of industrial and commercial establishments will have an unequaled opportunity to preview better and more efficient lighting units for offices and industrial plants, new and novel store lighting fixtures, advanced school lighting and new types of floodlighting units for sport areas and service stations.

As part of the exposition there will be conducted a series of lighting conferences at which outstanding men in the field will discuss the latest trends in lighting practice, the most effective means of providing efficient seeing conditions for school children and for office and factory employes. There will also be a symposium on the most effective means of using light for more and better selling.

The International Lighting Exposition is one of the many activities sponsored by the Industrial and Commercial Lighting Equipment Section of the National Electrical Manufacturers Association to stimulate better lighting for war production and for the post-war period.

Salsbury Named Vice President Westinghouse Elec. Supply

DAVID M. SALSBURY has been elected vice president and general manager of the Westinghouse Electric Supply Company, according to an announcement by B. W. Clark, president of Westinghouse Electric Supply Company and vice president of the parent company, Westinghouse Electric & Mfg. Company.

In his new position Mr. Salsbury will head the company's operations, reporting to the president.

Westinghouse Electric Supply Company, the wholesale marketing outlet subsidiary of Westinghouse Electric & Mfg. Company, in normal times sells home appliances through retailers, and apparatus and supplies directly to customers, doing approximately $125,000,000 worth of business annually.

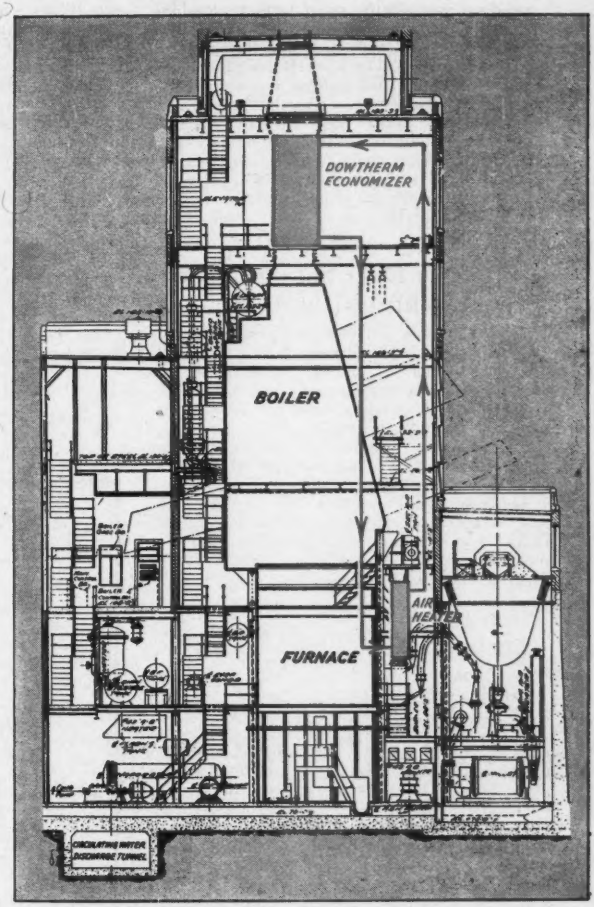
Clark Introduces Precision Lever-Lock Boring Bar

RECENTLY announced by the Robert H. Clark Company of Beverly Hills, California, is the Clark Precision Lever-Lock Boring Bar. According to the manufacturer, these new boring bars provide many unusual features and answer a long-felt need for a bar with separate tool bits for small diameter holes.

Presented as a companion tool to the Clark Adjustable Tool Holder, these new boring bars

DOWTHERM ECONOMIZER FOR AIR-PREHEATING

Complete elimination of large preheater air ducts extending from above the boiler to the firing floor, 100 feet below, has been effected at the Bremo Station of the Virginia Public Service Company. The customary air heater, located over the boiler, was replaced by an economizer heating Dowtherm (not water) to 500° F. The hot Dowtherm is pumped down through small diameter lines to the burners, where it is used as the heating medium in tubular air preheaters. Besides doing away with cumbersome ducts, this system reduces radiation losses and gives individual control of primary and secondary air temperatures.



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are available in sets of four: 3/16 in. x 5 in., ¼ in. x 6 in., ⅜ in. x 7 in., and ½ in. x 8 in.

According to the manufacturer, boring bars with separate cutters in sizes below ⅜ in. have never before been generally available, yet these Clark Lever-Lock Boring Bars are designed for use without bushings or adaptors. They require no special clamps or holders. The parallel type Clark Adjustable Tool Holders hold them securely, and together they make a practical combination.

Leading manufacturers of tungsten carbide tool bits now supply solid round carbide bits in small sizes down to 3/32 in. diameter for use in the Clark Lever-Lock Boring Bar.

Shown for the first time at the recent National Metals Congress in Cleveland, these new boring bars are said to have attracted the favorable attention of tool designers, engineers and production management men because of their practical flexibility, simplicity and economy.

Complete specifications, prices, etc., may be had by writing the manufacturer, 9330 Santa Monica boulevard, Beverly Hills, California.

Appliance Distributing Branch Established by G-E

THE wholesale distribution of General Electric household appliances in the Pittsburgh area will be handled by the company's newly created appliance distributing branch, it is announced by P. A. Tilley, manager of the company's distributing branches.

Mr. Tilley also announced the appointment of C. W. Hartenfels as manager of the new branch.

The branch will be responsible for the wholesale distribution of household refrigerators, ranges, water heaters, home laundry equipment, dishwashers, Disposals, kitchen cabinet equipment, and automatic blankets.

Stone & Webster Eng. Corp. Announces Personnel Changes

THE board of directors of Stone & Webster Engineering Corporation at its meeting held on December 20th elected Russell T. Branch, president of the corporation to succeed John R. Lotz, who was elected chairman of the board after serving eight years as president. Mr. Branch's election to the presidency of the Engineering Corporation follows more than thirty years of service with the Stone & Webster organization during which period he has been successively superintendent of construction, construction manager, vice president and senior construction manager, and executive vice president.

Mr. Branch joined the Stone & Webster organization on his graduation from Stevens Institute of Technology in 1912, has supervised and directed many outstanding projects in the public utility and industrial fields, and during the present war has devoted substantially his entire attention to the management of important ordnance and other projects essential to the war effort designed and constructed by the corporation for the United States Government.

Mr. Lotz, under whose guidance the organization has successfully executed an unprecedented volume of work, will continue to have an active part in the affairs of the corporation.

The board of directors also announces the election of Emmart LaCrosse as vice chairman of the board, Joseph Pope as first vice president, and Karl Finsterbusch, H. E. Brailey, R. E. Argersinger, and H. L. Bunce, Jr., as vice presidents of the corporation.

Chevrolet Appointment

JOHN W. BURKE has been appointed manager of the Chevrolet commercial and truck department to succeed W. E. Fish, who was recently advanced to the position of assistant general manager of the Chevrolet Motor Division, General Motors Corporation. Announcement of Mr. Burke's appointment was made by William E. Holler, general sales manager.

Peabody Oil Burners

A NEW bulletin, No. 802, describing the Peabody Type M Oil Burner, has just been prepared by the Peabody Engineering Corpora-

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Mercoid Controls are widely used in the fields of heating, air conditioning, refrigeration and various industrial applications ● Whatever the control requirement may be, it is conceded that dependable performance is most essential, due to the fact that any equipment governed by an automatic control is more or less dependent upon the control ● The dependability of Mercoid Controls is based upon their fundamental construction and operation. They are equipped exclusively with hermetically sealed mercury switches of special design ● Mercoid mercury switches are known the world over for their dependable service. They are not affected by dust, dirt or corrosion; nor are they subject to open arcing, with its attendant consequences of pitting, sticking or oxidized contact surfaces, all of which, are likely to interfere with normal switch operation ● The Mercoid Switch is one of the principle reasons among other things, why Mercoid Controls on the whole, give the assurance of better control performance and longer control life—a distinct and unfailing advantage —the reason why they are the choice of America's leading engineers for many important wartime industrial applications. ● Catalog sent upon request.

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tion of 580 Fifth avenue, New York 19. It describes and illustrates the mechanical and operating features of the burner, for natural or forced draft operation and for use with mechanical, wide range mechanical, or steam atomizers. Copies may be obtained on request.

H. B. Higgins Elected Westinghouse Director

THE election of Harry B. Higgins, president of the Pittsburgh Plate Glass Company, to the board of directors of the Westinghouse Electric & Mfg. Company has been announced by A. W. Robertson, chairman of Westinghouse.

Mr. Higgins, who was elected president of the Pittsburgh Plate Glass Company in January, 1944, has been associated with that company since 1905.

New Appointments in G-E Meter Division

FOUR new appointments in General Electric Company's Meter and Instrument Division recently announced by E. H. Howell, division manager, were effective January 1st. They are: Richard Cutts, Jr., manager sales, meter section; E. J. Wehrle, manager sales, and R. H. Mitchell, assistant manager sales, electric instrument section; and E. J. Boland, manager sales, aircraft instrument section. The four men will be located at the West Lynn works.

Symbols Standard Approved for Communications Field

A REVISED American standard for graphical symbols for telephone, telegraph, and radio use has just been approved by the American Standards Association, giving new symbols for new types of apparatus and reconciling conflicts in previous standards.

Work on the standard has been carried out under the technical leadership of the American Institute of Electrical Engineers and the American Society of Mechanical Engineers, with the Signal Corps Standards Agency, the Aeronautical Board, and the Bureau of Ships coöperating, as well as the industries concerned. It is understood that the new standard is already being placed in use by the Signal Corps and will be used by the Ground Signal Publications Agency in the preparation of all future drawings and instruction books for Signal Corps ground signal equipment.

This standard is a revision of and supersedes the American standard symbols for telephone, telegraph, and radio use (Z32.5) published in 1942; but it includes solutions for conflicting symbols in the power and communications fields that were worked out in the war standard published earlier this year (Z32.11), and it incorporates new material.

The American standard graphical symbols for telephone, telegraph, and radio use (Z32.5-1944) may be obtained from the American Standards Association, 70 East 45th street, New York 17, at 30 cents a copy. Quantity prices available on request.

Republic Steel Issues Booklet Describing "Service Record"

THE "service record" of Republic Steel Corporation in World War II is given in a 100-page book recently released by the company, entitled "Republic Goes to War."

The book points out that, at the request of the War Production Board, Reconstruction Finance Corporation, and other governmental agencies, Republic has undertaken forty-two Defense Plant Corporation projects with a total wartime cost of more than $200,000,000.

Included in these projects are a complete steel plant in Chicago, blast furnaces in Cleveland, Youngstown, and Gadsden, gun barrel plant, electric furnaces, and millions of square feet of building expansion.

Republic's steel production almost doubled between 1939 and 1943. In the first year it totaled 4,817,000 tons and in the latter year 8,651,000 tons. Electric furnace steel production leaped from 112,441 tons in 1939 to 1,085,000 tons in 1943.

"Republic Goes to War" tells how the company changed its 98 in. strip mill to a producer of steel ship plates, how it increased the output of iron ore in its Adirondack mines, and how it "mined" 390,000 tons of scrap from abandoned slag dumps.

Republic plants have received seven Army-Navy "E's," one Maritime "M," three Guidon Awards from the Fifth Service Command, War Department, and a National Security Award from the Office of Civilian Defense.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. « « «

(Professional Directory Continued on Next Page)

PROFESSIONAL DIRECTORY

(*continued*)

PROFESSIONAL DIRECTORY

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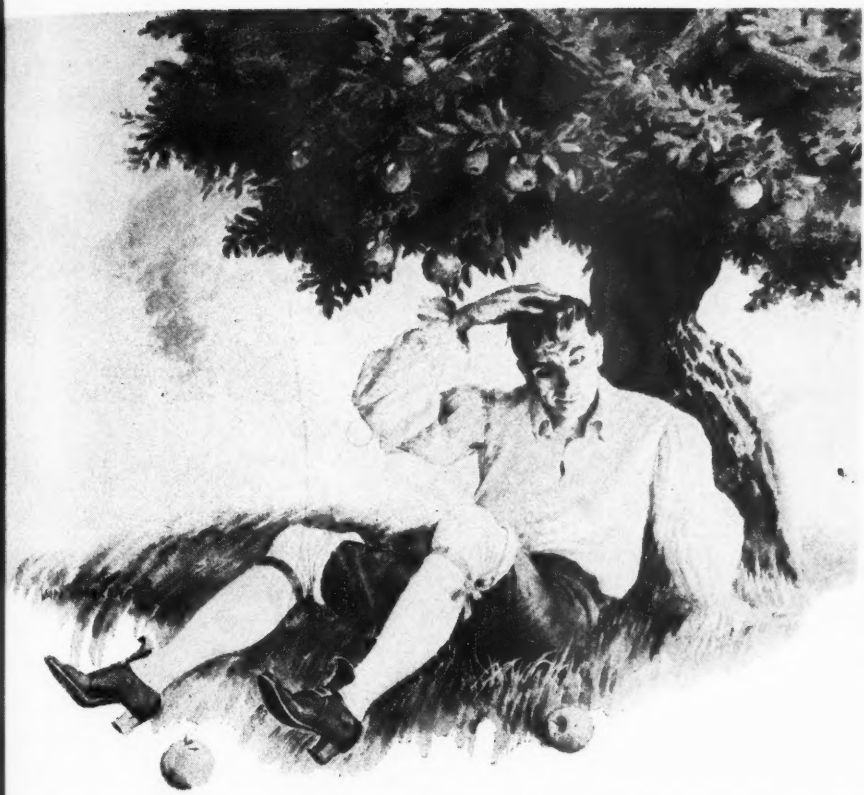
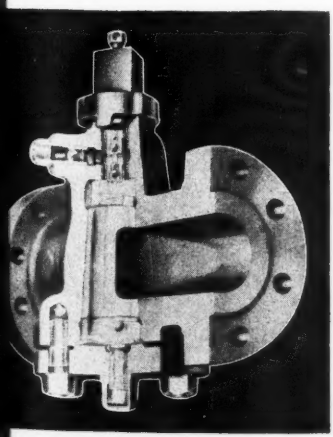
* Fortnightly advertisers not in this issue.



THE LAWS OF PHYSICS NEVER CHANGE



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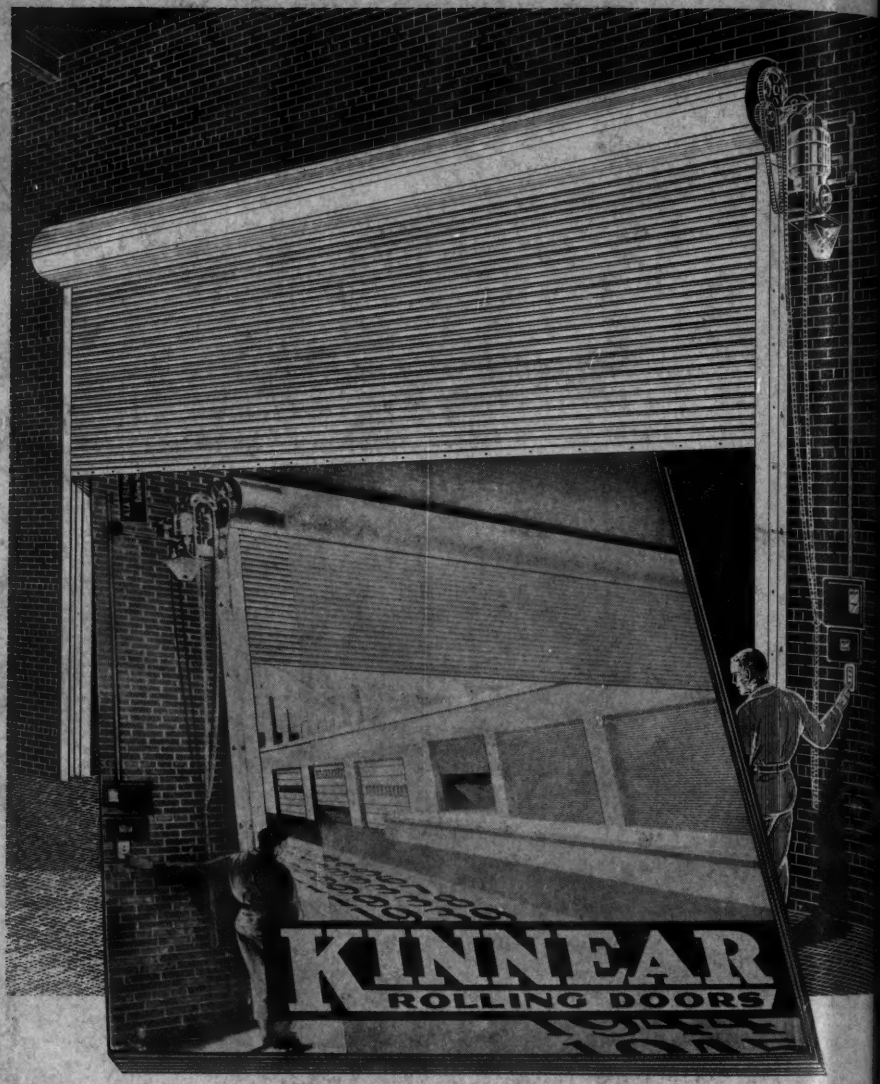

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